

ALBERT CARLISLE

1 A. Right.

2 Q. In regard to number four, cost of repairs to
3 real property caused by Matson's timbering operations, you
4 knew of that in 1997, correct?

5 A. We did. I'm not sure if we had an exact
6 figure but we knew, yes, that there had been damage done.

7 Q. You told me, I think, that the mud slide had
8 occurred right before you filed the lawsuit?

9 A. It occurred before we filed the lawsuit.
10 Scott had certainly seen it.

11 Q. And you knew Scott didn't present damages
12 relative to that?

13 A. Right.

14 Q. Three, value of timber remaining to be
15 harvested by Matson. If my recollection is correct that
16 dealt with trees that sprouted prior to 1969, correct?

17 A. That's right.

18 Q. And you knew after the verdict that Matson was
19 entitled to harvest trees that sprouted prior to 1969, based
20 on the verdict.

21 A. Based on the verdict we knew that, yes.

22 Q. And the timber that was wrongfully harvested
23 by Matson in D, on page nine, the four hundred and
24 thirty-eight thousand dollars --

25 A. Um-hum.

ALBERT CARLISLE

1 an extremely fine Cherry tree that was there, veneer Cherry
2 tree, and he was afraid that might have been damaged. So we
3 cut very small amount of trees. Most of the trees were in a
4 right-of-way road.

5 Q. Right-of-way for the state?

6 A. For the state.

7 Q. So they were cut mainly at the request of the
8 state?

9 A. They wanted to, yeah.

10 Q. And the Cherry tree you mentioned was cut so
11 it wouldn't be damaged?

12 A. It was cut so it wouldn't lose its veneer
13 category, and it was in what we would say was a no-cut zone
14 anyway, so we felt absolutely right to cut it. It was when
15 -- it was within a hundred feet of the waterway.

16 Q. So the no-cut zone only applied to Matson and
17 could you cut --

18 A. I could cut, yeah. Jim had been watching that
19 tree for a long time, he didn't want anybody to get it.

20 Q. Are there any other damages you're seeking to
21 recover in this action against Mr. Hare and the other
22 defendants other than what's set forth in the answer on page
23 nine?

24 MR. CONNER: I think you also mentioned the
25 cloud on the title.

ALBERT CARLISLE

1 A. I did mention a cloud on the title.

2 Q. That wouldn't be damages, would it?

3 MR. CONNER: Well, damage, you can't market
4 the property.

5 MR. HABER: You didn't list that. I guess
6 that would be a supplemental answer.

7 Q. You're trying to sell the property?

8 A. No, not at the minute, but I might try to sell
9 it. And so I couldn't. I mean, there's no way I could sell
10 it.

11 Q. Because of the cloud on the title. What cloud
12 on the title? The quitclaim deed?

13 A. That's part of it, but Matson could come and
14 cut these trees and they're not careful about following any
15 restrictions that might be in place.

16 Q. You're in litigation with Matson regarding
17 what, if any, right they have to the trees on the property?

18 A. That's right.

19 Q. And Mr. Hare hasn't been your attorney since
20 1998, correct?

21 A. I guess that's right.

22 Q. And since 1998 are you any closer to resolving
23 the dispute with Matson Lumber than you were back in 1998?

24 A. No. But if we had resolved it correctly in
25 1997, we wouldn't be having this problem.

ALBERT CARLISLE

1 Q. And you believe because Mr. Hare's negligence
2 you didn't resolve the problem, correct?

3 A. I really do believe that.

4 Q. And that negligence is failure to find
5 document H?

6 A. Yes.

7 Q. And failure to present the damages to the
8 jury? Proper damages.

9 A. Um-hum.

10 Q. Part of your claim in this case is that he
11 voluntarily dismissed the trespass and the conversion --

12 A. Right.

13 Q. -- case. You didn't learn that until sometime
14 after the jury verdict.

15 A. That's right.

16 Q. But the only thing you knew at the time of the
17 jury verdict was you received what you believed to be
18 inadequate damages?

19 A. That's right.

20 Q. Without knowing H -- without knowing that
21 Exhibit H existed, do you believe Mr. Hare should have argued
22 that Matson Lumber had no right to trees that sprouted prior
23 to 1996?

24 A. I think he should have done a title search.

25 Q. I understand that. But what I'm trying to --

ALBERT CARLISLE

1 I mean, when the case was litigated, I'm assuming nobody knew
2 that Exhibit H existed.

3 A. Okay, nobody knew there were -- I can't go
4 into this but -- because I don't remember the figures -- but
5 Jim Hall and Lainard had all kinds of damages they thought we
6 -- Scott never brought them up.

7 Q. I understand. There were damages that you
8 believe Scott Hare should have presented that he didn't
9 present?

10 A. Right.

11 Q. That's one part of the case. Damages was one
12 part. The other part was declaratory relief regarding what
13 rights Matson had with regards to the lumber.

14 A. Okay.

15 Q. And my question to you is: Do you believe
16 Scott should have argued to the jury or to the court that
17 Matson had no right to trees that sprouted prior to 1969 if
18 he didn't know about Exhibit H?

19 A. I think there could have been reason for that.

20 Q. Why?

21 A. A variety of reasons. One is that -- I'll
22 stop there. I just think there are some reasons.

23 Q. I need to know what those reasons are.

24 A. Well, some people told me timber rights don't
25 last forever, that would be one, and Scott didn't want to

ALBERT CARLISLE

1 address that.

2 Q. You knew that prior to -- at the time of the
3 --

4 A. We didn't really know what Scott was going to
5 present, we really didn't. It changed on a weekly -- we went
6 down to a meeting --

7 Q. Go ahead, I'm sorry. Go ahead.

8 A. -- with Scott in October and he changed
9 everything that we had worked on.

10 Q. But at the time of the verdict you knew Scott
11 wasn't arguing that Matson had no right to trees prior to
12 1969?

13 A. We knew after -- we knew after the trial was
14 over.

15 Q. At the time of the verdict?

16 A. Sure, at the time of the verdict.

17 Q. I guess I didn't follow up this. About the
18 cloud on your title you have no intention presently to sell
19 the property?

20 A. No.

21 Q. And you believe that you can't sell the
22 property till your disagreements with Matson are resolved?

23 A. Here's what I believe. I believe that the
24 value of the property resides in the timber and the streams
25 that go through the property which is greatly affected by the

ALBERT CARLISLE

1 timber, and other than that, it's just farmland and there's
2 not much value in farmland in Spring Creek, Pennsylvania.

3 Q. When you purchased the property in 1970 what
4 did you understand you were purchasing with regard to the
5 timber rights?

6 A. I thought we were purchasing the property, I
7 thought that Matson -- Fisher & Young had the right to come
8 in and cut a few trees. In fact, there was a whole series of
9 letters between Fisher & Young and myself as to when they
10 were going to come and cut the trees. They didn't do it. It
11 just kept getting worse and worse as time went on. We
12 protected -- we thought we protected sites for the Boy Scouts
13 camping areas, we thought we were fairly careful, but, as
14 usual, there's always surprises.

15 Q. When you say cut a few trees, what are you --

16 A. We thought they could cut -- we thought they
17 did have some rights to cut trees. We didn't know about H.

18 Q. H didn't exist at the time you purchased the
19 property.

20 A. Not the extent of the cutting that they did.

21 Q. Did Fisher & Young do any cutting on the
22 property?

23 A. Not at all.

24 Q. After you purchased the property the first
25 cutting was done by Matson?

ALBERT CARLISLE

1 A. Matson.

2 Q. In the mid eighties?

3 A. Yes.

4 Q. So for approximately fifteen years no cutting
5 was done.

6 A. No cutting.

7 Q. When you purchased the property in 1970, did
8 anyone ever give you a value regarding the timber on the
9 property -- what the timber was worth on the property?

10 A. Not really. I'd say no. I had no idea.

11 Q. I'm showing you what's been marked as Exhibit
12 I, and that is a quitclaim deed from Dora Squatriti to Matson
13 Lumber Company.

14 A. Right.

15 Q. When did you first learn this?

16 A. Well, what day did she sign it?

17 Q. May 22, 2003.

18 A. I learned about it sometime around maybe late
19 May, early June.

20 Q. Of 2003?

21 A. Right.

22 Q. And how did you learn about it?

23 A. I don't know who told me, somebody told me.

24 Q. Excuse me.

25 A. I don't know who told me, somebody told me.

ALBERT CARLISLE

1 She still has relatives in Warren and I think comes back to
2 visit.

3 Q. When you first became interested -- or the Boy
4 Scouts and you became interested in purchasing this property,
5 did you have an understanding of how Fisher & Young acquired
6 the property?

7 A. Vaguely, just a vague -- I'll tell you all I
8 know. The Boy Scouts found the property, heard about it
9 through a trust officer in a bank somewhere in Warren County,
10 they heard it was for sale, they went over to talk to the
11 trust office and found out that Fisher & Young had just made
12 some arrangement with Mrs. Kinkead, so we were a little late.
13 But they found out through some trust office in a bank in
14 Warren County somewhere.

15 Q. What I marked as Exhibit J is the deed from
16 Marian Kinkead to Fisher & Young.

17 MR. CONNER: '69.

18 Q. In 1969, correct?

19 A. Okay.

20 Q. Now, what I have marked as Exhibit K is the
21 Article of Agreement between Ms. Kinkead and Fisher & Young,
22 correct?

23 A. Exhibit which?

24 Q. K?

25 A. K, right, um-hum.

ALBERT CARLISLE

1 Q. Prior to you purchasing the property from
2 Fisher & Young, did you know the existence of J and K?

3 A. No.

4 Q. To your knowledge, did your attorney know the
5 existence of J and K?

6 A. I think Terry Warren had some inkling.

7 Q. Inkling of what?

8 A. Well, I just know that he was concerned about
9 the timber rights, that's all I know, that he wasn't sure
10 that Fisher & Young completely had them. I certainly
11 mentioned that to Scott several times.

12 Q. That he -- he was concerned -- Terry Warren
13 was concerned that Fisher & Young did not have the timber
14 rights?

15 A. Total control of them.

16 Q. And I don't know what you mean total control.

17 A. Well, I think they hadn't paid Mrs. Kinkead a
18 certain amount and their answer to Terry was we'd be foolish
19 not to pay because the value was there. But I never saw that
20 correspondence, I just heard about it.

21 Q. In Exhibit K it indicates that the eighty
22 thousand dollars will be paid in installments, correct?

23 A. Um-hum.

24 Q. Until it's paid off. So when you went to
25 purchase the property in 1970, isn't it your understanding

ALBERT CARLISLE

1 that Fisher & Young had not fully paid Mrs. Kinkead for the
2 timber rights?

3 A. It wasn't my understanding but I think that is
4 what worried Terry.

5 Q. That would worry Terry.

6 A. I'm sure it did.

7 Q. Didn't Terry discuss that with you?

8 A. No. He said he had some concerns.

9 Q. Can you read L -- read L to yourself?

10 A. Sure. I never saw this. It says copy but I
11 don't remember ever seeing it. That's interesting, I never
12 did see it.

13 Q. Exhibit L is a letter from your attorney,
14 Mr. Warren --

15 A. Um-hum.

16 Q. -- to Mr. Kookogey, who was the attorney for
17 Fisher & Young, right?

18 A. Right.

19 Q. And you'll agree that you were cc'ed on the
20 letter?

21 A. I do agree with that.

22 Q. You don't recall --

23 A. I don't recall seeing this letter.

24 Q. And the date of the letter is February 11,
25 1971?

ALBERT CARLISLE

1 A. Right.

2 Q. That is after you purchased the property,
3 correct?

4 A. Right, um-hum.

5 Q. And does the letter not discuss a problem
6 regarding Fisher & Young's failure to complete the purchase
7 of timber rights --

8 A. Sure it does.

9 Q. Let me finish. The failure to complete the
10 purchase of the timber rights from Mrs. Kinkead?

11 A. Yes.

12 Q. And wouldn't Exhibit H have been the
13 resolution of that problem regarding Fisher & Young's
14 purchase of the timber rights?

15 A. Pardon.

16 Q. Wouldn't Exhibit H, the deed in 1973, been the
17 resolution of how Fisher & Young secured the timber rights
18 from Mrs. Kinkead?

19 MR. CONNER: Object to the form of the
20 question. It asks for a legal conclusion. Go ahead
21 answer the question.

22 A. I still don't get it.

23 Q. You recognize that there's a problem as set
24 forth in Exhibit L, that Fisher & Young has not completed
25 the purchase of the timber rights from Mrs. Kinkead.

ALBERT CARLISLE

1 A. Um-hum.

2 Q. How was that resolved?

3 A. I don't know.

4 Q. Wasn't it resolved by Exhibit H?

5 A. Maybe, maybe not. I don't know.

6 Q. Are you aware of any other agreement
7 subsequent to this letter of February 11, 1971, between Mrs.
8 Kinkead and Fisher & Young relative to the timber rights?

9 A. No.

10 Q. Did Mr. Warren ever communicate to you how
11 this problem was going to be resolved regarding the failure
12 of Fisher & Young to fully pay off Mrs. Kinkead?

13 A. It says here Fisher & Young will cut timber
14 and pay off Mrs. Kinkead. That's what it says. That looks
15 like Terry's handwriting.

16 Q. But you will agree that as of February 11,
17 1971 your counsel was aware of a problem?

18 A. He was aware of a problem.

19 Q. And there is no other deed or agreement other
20 than Exhibit H that occurred after this letter?

21 A. Well, I don't know.

22 Q. You're not aware of any?

23 A. I'm not aware of any.

24 Q. That's what I'm saying. Don't put the letter
25 away.

ALBERT CARLISLE

1 A. I've got it right on top.

2 Q. On the bottom of the first page, going onto
3 the top of the second page, it says: I, referring to
4 Mr. Warren, had proposed to you that we work out some plan
5 concerning a terminable interest of the timber rights.

6 A. Right.

7 Q. Do you know what he means there?

8 A. That's what -- we assumed there was a terminal
9 date.

10 Q. So, as of 1971 you -- your counsel, had a
11 disagreement with Fisher & Young's counsel regarding when --
12 if the timber rights were terminated?

13 A. We assumed there would be a terminal date,
14 right.

15 Q. And what was that assumption based on?

16 A. Common sense. Timber rights aren't usually
17 given for -- I mean, they're given for a specific number of
18 years. This wasn't.

19 Q. And you had told me that you had never been
20 involved in this type of timber dealing before.

21 A. No, never.

22 Q. What was your basis of concluding that timber
23 rights are not usually given in perpetuity?

24 A. I think Terry said it would be unusual for
25 them not to have a cut-off date.

ALBERT CARLISLE

1 Q. Mr. Warren is a lawyer that dealt with timber
2 rights before?

3 A. Oh, I don't know. I have no idea.

4 Q. But if you learned that, that timber rights
5 aren't usually given in perpetuity, that would have probably
6 been from Mr. Warren?

7 A. Probably been from Mr. Warren.

8 Q. As of 1971 did you know Mr. Hall?

9 A. No.

10 Q. When did you first meet Mr. Hall?

11 A. I don't remember. I met him -- I met him
12 through the museum of natural history in Cleveland. He's
13 their appraiser. And when they found out I needed an
14 appraiser, I met him so it was before 1995, I'm not sure what
15 year. Maybe 1993, '94, something like that.

16 Q. I'd like you to read that.

17 A. Okay.

18 Q. Is the letter dated December 23, 1970?

19 A. Yes.

20 Q. To Mr. Kookogey?

21 A. Yes.

22 Q. From Mr. Warren?

23 A. Right.

24 Q. And Mr. Philip Cochran is cc'ed. Is he the
25 person from the Boy Scouts?

ALBERT CARLISLE

1 A. No. He was the president of Fisher & Young.
2 Q. Okay. This letter also discusses a problem
3 with Fisher & Young being able to convey the rights and the
4 timber, correct?

5 A. Um-hum.

6 Q. And in the first sentence of the letter it
7 relates to a defect that appears in the title?

8 A. Right.

9 Q. Guaranteed. Is that defect the inability of
10 Fisher & Young to convey rights in the timber?

11 A. Apparently.

12 Q. And the reason that there was a defect was
13 because they had not completed their purchase --

14 A. That's right.

15 Q. -- from Mrs. Kinkead, correct?

16 A. Right.

17 Q. And you were aware of this when it was going
18 on?

19 A. I wasn't aware of the details. Terry told me
20 there was some problem.

21 Q. There was a problem in the title?

22 A. I wasn't sure what the problem was.

23 Q. But you knew there was a problem relative to
24 Fisher & Young getting rights from Mrs. Kinkead.

25 A. I just knew there was a problem revolving

ALBERT CARLISLE

1 around the timber rights.

2 Q. In the middle of the second paragraph it
3 indicates that Mr. Warren was concerned about the underlying
4 agreement between Fisher & Young and Mrs. Kinkead.

5 A. Right.

6 Q. That would have been the timber agreement?

7 A. Yes.

8 Q. When you purchased the property, which was
9 earlier this year -- earlier in 1970 --

10 A. Right, earlier.

11 Q. -- were you aware of this agreement?

12 A. (Nodded head.)

13 MR. CONNER: You have to give a verbal answer.

14 A. No.

15 Q. And when Mr. Warren became aware of this
16 timber agreement between Mrs. Kinkead and Fisher & Young, did
17 he advise you of it?

18 A. Indirectly. I just -- again, he just told me
19 there was a problem.

20 Q. There was a problem. How do you -- what is
21 your understanding of how that problem was resolved?

22 A. I didn't know.

23 Q. You didn't know?

24 A. I had confidence -- Terry was my friend and
25 neighbor, I had confidence that Terry would take care of

ALBERT CARLISLE

1 A. I purchased it.

2 Q. I may have asked you this question before but
3 I apologize. Since you learned about Exhibit H --

4 A. Right.

5 Q. -- which is the 1973 deed, did you ever ask
6 Mr. Warren if he knew about the deed?

7 A. I didn't. As I said, he's retired, I saw him
8 -- my mother died this year, he came to the service. I think
9 that's the last time I have seen him.

10 Q. And I think I have asked you, you don't have
11 personal knowledge of who prepared Exhibit H.

12 A. No.

13 Q. Please read Exhibit N.

14 A. Okay. I tried to figure out who it was from.
15 Okay.

16 Q. Do you recall ever seeing this letter?

17 A. No, I never did.

18 Q. And you'll agree this is a letter from
19 Mr. Kookogey to your attorney Mr. Warren.

20 A. Yes.

21 Q. And the date of the letter is April 28, 1970?

22 A. Right.

23 Q. And that's subsequent to your purchase of the
24 property.

25 A. Right.

ALBERT CARLISLE

1 letting a good partner go in default and Terry felt that that
2 was a genuine statement.

3 Q. Prior to you purchasing the property, did you
4 get any appraisal of the property?

5 A. No.

6 Q. How did you come to the amount of a hundred
7 thousand dollars?

8 A. Boy Scouts did that. I was a -- I was a
9 Johnny-come-lately. The Boy Scouts had made the
10 arrangements.

11 Q. And so the hundred thousand dollars that you
12 agreed to pay was more the number the Boy Scouts had agreed
13 to?

14 A. It was the number.

15 Q. I'm assuming the Boy Scouts, if they would
16 have purchased the property, they weren't purchasing it for
17 timber?

18 A. Well --

19 Q. Maybe I'm wrong.

20 A. Yeah, I think you are. Well, I don't want to
21 go into it, but they purchased another property, which I
22 don't want to go into, it has nothing to do with this
23 property, they did timber it. They purchased property about
24 twenty miles away.

25 Q. The fourth paragraph says Fisher & Young will

ALBERT CARLISLE

1 furnish Carlisle with an independent appraisal of the present
2 value of the timber which was estimated by Fisher & Young two
3 years ago to approximately a hundred thousand dollars. Do
4 you recall ever receiving that appraisal?

5 A. No. This is the first I think I've ever seen
6 this.

7 Q. I would ask that you read Exhibit O.

8 A. (Witness complied.) Okay.

9 Q. Have you ever seen this letter before?

10 A. No, I haven't.

11 Q. This is a letter from your attorney to
12 Mr. Kookogey, correct?

13 A. Yes, um-hum.

14 Q. Dated February 13, 1970?

15 A. Right.

16 Q. It referenced that neither Mr. Carlisle or I
17 knew anything concerning the relationship between Fisher &
18 Young and Mrs. Kinkead, correct? The end of the first
19 paragraph.

20 A. Yeah.

21 Q. And that refers to the timber agreement.

22 A. Must have been, they didn't know at that time.

23 Q. Do you know if that timber agreement was ever
24 filed in Warren County in the recorder of deeds? Do you know
25 that?

ALBERT CARLISLE

1 A. No.

2 Q. Prior to your purchase of the property was a
3 title search done?

4 MR. CONNER: If you know.

5 A. I don't know.

6 Q. I'm just asking.

7 A. I don't know. We got a title insurance
8 policy, I know we got that.

9 Q. Do you know if Mr. Warren ever did a title
10 search?

11 A. I don't know who would have done it.

12 Q. There's handwriting on Exhibit O.

13 A. Right.

14 Q. Do you know whose handwriting that is?

15 A. I'm guessing it's Terry's but I'm not sure.

16 Q. You're not sure?

17 A. No.

18 Q. It's not yours?

19 A. It's not mine. We know it's not mine, no,
20 because it says signed by Burt.

21 Q. What do you mean signed by Burt?

22 A. It says: Original agreement to our complaint
23 was signed by Burt. So that means somebody other than Burt
24 signed that -- wrote that.

25 Q. When you purchased the property you had no

ALBERT CARLISLE

1 idea about the timber agreements.

2 A. No. I'm glad to see these. I have never seen
3 these letters.

4 Q. Exhibit P is a letter from Attorney Harry
5 Martin --

6 A. Right.

7 Q. -- to your attorney Mr. Warren --

8 A. Yes.

9 Q. -- dated March 27, 1973, correct?

10 A. Yes, um-hum.

11 Q. And it indicates that American Hardwood
12 Industries is purchasing the timber rights which Fisher &
13 Young reserved under its agreement with yourself, correct?

14 a. Right.

15 Q. And you've never seen this letter before?

16 A. I saw this letter.

17 Q. You did see this letter?

18 A. Um-hum.

19 Q. Did you do anything or you or your attorney do
20 anything in relation to this letter?

21 A. Yes.

22 Q. What did you do?

23 A. We arranged to have a meeting with
24 Mr. Ascherman.

25 Q. The man who was --

ALBERT CARLISLE

1 A. Herbert Ascherman. Here it is on the second
2 page, second to the last paragraph. Its principal Herbert S.
3 Ascherman and we came down and had dinner with him at the
4 Erie Club, as a matter of fact.

5 Q. What was the purpose of the meeting?

6 A. To discuss what his intentions were and
7 whether we could work out some kind of arrangement.

8 Q. And at this time, in 1973, you understood that
9 the relationship -- the timber rights on the property were
10 controlled by your agreement with Fisher & Young?

11 MR. CONNER: Object to the form of the
12 question, but go ahead, answer the question.

13 Q. What was -- that was your understanding?

14 MR. CONNER: Same objection. Go ahead.

15 A. Please give me that again.

16 Q. As of the date of this letter, March 27, 1973,
17 did you understand that your rights in the timber and Fisher
18 & Young's rights in the timber were controlled by your
19 agreement with Fisher & Young?

20 MR. CONNER: Same objection.

21 A. I would guess that I did.

22 Q. And that American Hardwood was purchasing
23 whatever rights Fisher & Young had under that agreement?

24 A. Yes. But there was a question there because
25 in that agreement that I had with Fisher & Young I was

ALBERT CARLISLE

1 supposed to have been given right of first refusal if they
2 were -- if the timber rights were ever sold.

3 Q. Did that issue come about in 1973?

4 A. One of the things we meet with Mr. Ascherman
5 about.

6 Q. Did you want to exercise that agreement?

7 A. We tried to work out an arrangement with him
8 so that basically we were going to divide the trees, but he
9 never cut any, so it didn't make any difference.

10 Q. American Hardwood?

11 A. American Hardwood never cut any trees.

12 Q. The only person that cut any trees was Matson?

13 A. Matson.

14 Q. Have you seen Exhibit Q?

15 A. Yes, I have seen this.

16 Q. Exhibit Q is a request from Fisher & Young
17 regarding their decision to sell --

18 A. Right.

19 Q. -- timber rights in March of 1973?

20 A. Right.

21 Q. It makes reference to the agreement between
22 you and Fisher & Young dated May 25, 1969.

23 A. Right.

24 Q. Is that the date of your agreement with them?

25 A. I think it is.

ALBERT CARLISLE

1 six years later. I'm asking when you received this letter,
2 did you disagrees --

3 A. I wasn't sure.

4 Q. And you don't recall if you contacted counsel?

5 A. I can't remember at the time.

6 Q. There's a writing on the top of the letter.

7 A. Yes.

8 Q. Do you know who's writing that is?

9 A. No, I don't. I have no idea.

10 Q. I'm showing you what's been marked as Exhibit
11 U.

12 A. Yes.

13 Q. And that is a letter from Mr. Hare to
14 Mr. Bush --

15 A. Right.

16 Q. -- dated June 23, 1998.

17 A. Um-hum.

18 Q. And a request that Mr. Bush file the praecipe
19 for writ of summons?

20 A. Right.

21 Q. Did you know this was happening?

22 A. Yeah, I was there.

23 Q. You were there when Mr. Bush went to the
24 courthouse?

25 A. I went with him.

ALBERT CARLISLE

1 Q. After this occurred, did Mr. Hare do any
2 further work for you? Did he do anything further after he
3 forwarded to Mr. Bush this praecipe for writ of summons?

4 A. I'm sure he did but I don't know exactly.

5 Q. This was about six months after the jury
6 verdict.

7 A. Yes.

8 Q. Do you know if you had already contacted Mr.
9 Krembs?

10 A. I don't remember but I don't think I had.

11 MR. HABER: Give me five minutes, I think I'm
12 done.

13 (Whereupon, a break was had.)

14 BY MR. HABER:

15 Q. When you had originally talked to Mr. Hare it
16 was about a family -- you had family problems.

17 A. I had two problems, one was a family problem.

18 Q. Mr. Hare prepared a complaint that he proposed
19 filing against your family.

20 A. Yes.

21 Q. And you made a decision not to pursue.

22 A. No, I wanted to file it.

23 Q. Who didn't want to file it?

24 A. He didn't file it.

25 Q. He didn't want to file it --

ALBERT CARLISLE

1 MR. CONNER: Sure.

2 Q. I'm showing you what's been marked as Exhibit
3 V, it's a letter April 28th from Mr. Hare to Mr. Krembs.

4 A. Right.

5 Q. Correct?

6 A. Yes.

7 Q. Would Mr. Hare know of Mr. Krembs other than
8 if you told him? Do you have any other reason why Mr. Hare
9 would be writing to him?

10 A. No, he wouldn't.

11 Q. Apparently you had contacted Mr. Krembs by
12 April 28th?

13 A. I must have.

14 Q. And the dispute -- there was a dispute at that
15 time regarding payment of the bill, correct?

16 A. Yes. And that -- yes, that's true.

17 Q. Do you know if you had discussed anything else
18 with Mr. Krembs by April 28, 1999 other than the outstanding
19 bill?

20 A. No, I don't remember. I don't think -- I
21 can't remember.

22 MR. HABER: I have no further questions.

23 CROSS EXAMINATION

24 BY MR. CONNER:

25 Q. Just a couple follow-up questions. Mr.

ALBERT CARLISLE

1 Carlisle, you indicated, first of all, with regards to
2 Mr. Krembs, the lawyer that's on the letter that is addressed
3 in the last exhibit that you had -- he no longer represented
4 you. Was that a mistake?

5 A. I think that's a mistake.

6 Q. Why don't you -- do you know if there's any
7 formal separation --

8 A. There's been no formal separation. I just
9 haven't seen him in the last couple weeks.

10 Q. Second area of questions is, you were asked
11 some questions about the -- when you first became aware of
12 certain claims that were part of the declaratory judgment
13 action as to when they were dismissed by Scott Hare, and I
14 just want to call your attention to the time period after the
15 verdict in December of '97 and up until the time that this
16 summons was sent in the mail on June 23, 1998. Was it
17 sometime during that six-month time period that you first
18 became aware that certain claims were dismissed out of the
19 original declaratory judgment action?

20 A. Probably.

21 Q. Now, during that time period I'm talking
22 about, that six-month time period in '98, can you tell us
23 whether or not on one or more occasions Scott Hare made
24 representations to you in the presence of others as to the
25 value -- dollar value of those dismissed claims that could be

ALBERT CARLISLE

1 re-filed in Warren County?

2 A. He always held out a value of about five
3 million dollars.

4 Q. And can you tell us whether or not the actual
5 order and opinion of Judge Mellon, which I think is dated
6 January 30 of 2002, was that your first notice that you could
7 not proceed with those re-filed claims?

8 A. Yes.

9 MR. CONNER: That's all the questions I have.

10 REDIRECT EXAMINATION

11 BY MR. HABER:

12 Q. You said Scott indicated to you that the
13 claims that had been voluntarily dismissed in federal court
14 had a value of five million dollars of potential value?

15 A. Potential value.

16 Q. And you said that was in the presence of
17 others?

18 A. Yes.

19 Q. Who else?

20 A. Well, that came up even when we had the
21 mediation following the trial. And that figure was used
22 during the mediation.

23 Q. And who else was present?

24 A. Lainard Bush, Jim Hall and probably at one
25 point my accountant heard that.

1 IN THE COURT OF COMMON PLEAS
2 OF THE 37TH JUDICIAL DISTRICT OF PENNSYLVANIA
WARREN COUNTY BRANCH- CIVIL ACTION

3 - - - -

4 MATSON LUMBER COMPANY,)
5 Plaintiff,)
6 vs.) No. A.D. 579 of 2005
7 ALBERT T. CARLISLE, JAMES)
8 HALL, JOHN MARTIN and DONALD)
F. (D.J.) HOLMES,)
9 Defendants.)

11 IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

12 ALBERT T. CARLISLE,)
13 Plaintiff,)
14 vs.) No. 04-25 Erie
15 BARTONY, HARE & EDSON; SCOTT)
16 M. HARE, ESQUIRE; HENRY E.)
16 BARTONY, JR., ESQUIRE; and)
17 JOHN JOY V. EDSON, ESQUIRE,)
17 Defendants.)

19

20 DEPOSITION OF JOHN C. DENNISON

21 - - -

22

23 REPORTED BY:

1

2 DEPOSITION OF JOHN C. DENNISON, a witness
3 herein, called by Albert T. Carlisle, for examination,
4 taken pursuant to the Pennsylvania Rules of Civil
5 Procedure, by and before Stephanie Myers, a Court Reporter
6 and a Notary Public in and for the Commonwealth of
7 Pennsylvania, at the law offices of Dennison & Dennison,
8 293 Main Street, Brookville, Pennsylvania, on February 9,
9 2006, at approximately 12:04 p.m.

10

11

12

COUNSEL PRESENT:

13

14

For the Albert T.
Carlisle:

James R. Fryling, Esquire
Conner, Riley & Fryling
Bell Telephone Building
17 West Tenth Street
Erie, Pennsylvania 16512

15

16

For Matson:

Robert P. Ging, Esquire
2095 Humbert Road
Confluence, Pennsylvania 15424

17

18

19

For Scott Hare:

Amy J. Coco, Esquire
Weinheimer, Schadel & Haber
602 Law & Finance Building
429 Fourth Avenue
Pittsburgh, Pennsylvania 15219

20

21

22

23

Also present:

Leonard Domenick

24

25

STEPHANIE MYERS - COURT REPORTER

(814) 333-1545

1	- - -	
2	I N D E X	
3	- - -	
4	WITNESS	PAGE
5	JOHN C. DENNISON	
6	Examination	
7	By Mr. Fryling	5, 99
8	Examination	
9	By Ms. Coco	92
10	Examination	
11	By Mr. Ging	94
12		
13	- - -	
14	E X H I B I T S	
15	- - -	
16	NO.	PAGE
17	1 - January 23, 1987 invoice	23
18	2 - Timber deed - April 1, 1973	24
19	3 - Kinkead/Fisher & Young deed - April 22, 1969 ..	27
20	4 - August 10, 1993 correspondence	38
21	5 - April 18, 1994 correspondence	38
22	6 - Deed - December 29, 1989	38
23	7 - Deed - December 22, 1990	38
24		
25		

STEPHANIE MYERS - COURT REPORTER

(814) 333-1545

1	- - -	
2	E X H I B I T S	
3	- - -	
4	NO.	PAGE
5	_____	
6	8 - May 5, 1995 correspondence	42
7	9 - June 13, 1995 correspondence	42
8	10 - October 30, 1987 correspondence	46
9	11 - List of exhibits	47
10	12 - Deed - April 23, 1973	54
11	13 - Article of Agreement - April 1968	54
12	14 - Article of Agreement - April 1, 1968	54
13	15 - May 8, 2003 correspondence	69
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

STEPHANIE MYERS - COURT REPORTER

(814) 333-1545

1

P R O C E E D I N G S

2

- - -

3

4

JOHN C. DENNISON, a witness

5

6

herein, having been first duly sworn, was examined and
testified as follows:

7

EXAMINATION

8

BY MR. FRYLING:

9

10

Q. Good afternoon, Mr. Dennison. My name is James
Fryling, and I represent Albert T. Carlisle.

11

12

13

14

15

16

We have noticed your deposition here today on two
different captions. One is a case pending in the Court of
Common Pleas of the 37th Judicial District, Warren County,
Matson Lumber Company versus Albert T. Carlisle, James
Hall, John Martin and Donald F. (D.J.) Holmes, which has a
Docket No. 579 of 2005.

17

18

19

20

21

22

We have noticed it under caption of the case pending
in the United States District Court for the Western
District of Pennsylvania, Albert T. Carlisle, Plaintiff,
versus Bartony, Hare & Edson; Scott M. Hare, Esquire; Henry
E. Bartony, Jr., Esquire; and John Joy V. Edson, Esquire,
Defendants, at Docket No. 04-25, Erie.

23

24

25

We have noticed your deposition specifically for
today. We have also noticed the deposition of a
representative of Matson Lumber Company pursuant to FRCP

STEPHANIE MYERS - COURT REPORTER

(814) 333-1545

1 30(b)(6) and Rule 4007.1(2)(e) with regard to the areas of
2 inquiry that were listed in one through seven of that
3 Notice.

4 It is my understanding, from Attorney Ging, who
5 represents Matson Lumber Company in the Warren County
6 action, that you are being appointed or you're appearing
7 here today not only in the individual capacity, but also as
8 the corporate representative designated by Matson Lumber
9 Company for purposes of answering those questions; is that
10 correct?

11 A. That's correct.

12 Q. You have had an opportunity to review the Notice?

13 A. Yes.

14 MR. GING: For the record, Jim, we have the
15 original Notice that you had provided us, and it had
16 another caption on it. We don't have the final Notice. I
17 assume they are the same.

18 MR. FRYLING: That was a draft of the
19 original Notice.

20 MR. GING: Correct.

21 MR. FRYLING: And, at your request, we
22 replaced the Warren County case caption of Carlisle versus
23 Matson Lumber Company with the Matson Lumber Company versus
24 Carlisle, Hall, Martin and Holmes.

25 MR. GING: But in terms of the content, one

STEPHANIE MYERS - COURT REPORTER

(814) 333-1545

1 did you go high school?

2 A. Brookville High School.

3 Q. Your year of graduation?

4 A. 1970.

5 Q. Where did you go to college?

6 A. My first year, I went to the University of
7 Buffalo and transferred from there and I went to
8 Westminster College; I graduated in 1974. I stayed on an
9 extra year and got my Master's in education. I then worked
10 for a year at a correctional facility for juveniles and
11 then went to law school at Valparaiso University and
12 graduated in December of 1978.

13 Q. What was your undergraduate degree in?

14 A. History.

15 Q. Upon graduation in 1978, did you sit for the bar
16 exam?

17 A. Yes.

18 Q. And you passed the bar exam?

19 A. Yes.

20 Q. And when did you begin practicing?

21 A. Well, 1978, in December, I came back here, so I
22 took the bar exam in February of '79 and I passed. I got
23 my notice, I think April 15th, 1979, and I started
24 practicing then.

25 Q. You're currently with a practice now?

STEPHANIE MYERS - COURT REPORTER

(814) 333-1545

1 you have been in practice?

2 A. Yes.

3 Q. With regard to your real estate practice, is that
4 residential, commercial or both?

5 A. Both.

6 Q. All right. Is it weighted more heavily towards
7 one or the other?

8 A. I can't put a percentage, but I do a lot of
9 commercial real estate work, too, buying and selling
10 motels, timber land, businesses in general, and then, plus
11 we do a lot of residential work, too.

12 Q. How long, or how many years would your practice
13 have involved commercial real estate deals involving timber
14 or timber lands?

15 A. Since the early '80s.

16 Q. In the course of your practice involving
17 commercial timber land, have you come to represent a
18 company known as Matson Hardwoods or Matson Lumber Company?

19 A. Yes.

20 Q. How long have you represented Matson?

21 A. Since the early '80s.

22 Q. Okay, that would be prior to 1985?

23 A. Yes.

24 Q. Do you have any relationship, formal relationship
25 with Matson Hardwoods or Matson Lumber Company other than

STEPHANIE MYERS - COURT REPORTER

(814) 333-1545

1 Q. And just for the record, Robert Matson was an
2 officer or director of Matson Lumber Company or Matson
3 Hardwoods?

4 A. He was the owner.

5 Q. He was the owner, okay.

6 With regard to your being here today as designated by
7 Matson Lumber Company with regard to the items of inquiry
8 included in the Notice of Deposition, can you tell me what
9 investigation you undertook in order to prepare for your
10 deposition today as Matson's designated representative?

11 A. The only thing I did was I reviewed the
12 Deposition Notice, and I did not look at anything else in
13 preparation for today's testimony.

14 Q. Did you have any conversations or talk to any
15 employees of Matson Hardwoods or Matson Lumber Company?

16 A. No.

17 MR. GING: Just for clarification, you have
18 done other things dealing with this subject matter prior to
19 today; is that correct?

20 THE WITNESS: Oh, yes, but in actual
21 preparation for this, I didn't review anything.

22 BY MR. FRYLING:

23 Q. Okay, as I understand it, then, your firm began
24 doing legal work for Matson back in the early 1980s. Do
25 you know whether your firm did all of Matson's work or

STEPHANIE MYERS - COURT REPORTER

(814) 333-1545

1 A. No.

2 Q. And why not?

3 A. We didn't have time.

4 Q. And could you explain that?

5 A. Well, this thing all came about very quickly, and
6 when we realized how many tracts of land were involved, my
7 father and I, and when they wanted to close, it simply did
8 not make any sense for us to do any of the title work.

9 Even though economically that would have been great,
10 we couldn't have gotten it done within that time frame to
11 get the closing done, and in the midst of all of this,
12 somehow we became aware that John Kookogey had searched
13 and/or was in a position to issue a title certificate on
14 all these properties. So, it was on that basis that we
15 went to closing.

16 Q. Did you contact Attorney Kookogey directly with
17 regard to inquiring about title to the properties?

18 A. That's 20 years ago. I can't remember exactly
19 who contacted whom or whatever. I just remember my father
20 and I saying, We can't do this and then finding out that
21 Kookogey was willing to do it. And we were then able to
22 close before the end of the year, which was the critical
23 part.

24 Q. I take it, then, that Attorney Kookogey was in a
25 position to be able to provide, at least to your

STEPHANIE MYERS - COURT REPORTER

(814) 333-1545

1 satisfaction, the information necessary in order for the
2 merger to go through?

3 A. Yes, as far as on all the titles to the real
4 estate.

5 Q. Can you tell me what documents or information
6 Attorney Kookogey provided you with regard to the title for
7 the properties that were being acquired through the merger?

8 A. He gave us a certificate of title.

9 Q. Did he give you anything else other than a
10 certificate of title?

11 A. Not to my knowledge, not that I can remember.

12 Q. And what did the certificate of title include?
13 Do you know?

14 A. I mean, it's of record. If you show it to me ...

15 Q. Let me see if I brought a copy with me.

16 MR. GING: It was in our response to the
17 document in question.

18 BY MR. FRYLING:

19 Q. Mr. Dennison, I'm going to show you a copy of
20 answer to Defendant Carlisle's request for production of
21 documents on behalf of Matson Lumber Company in the
22 Carlisle, Hall, Martin and Holmes case, and attached
23 thereto, the first document has an exhibit label on the
24 bottom of it of 64.

25 I'm going to show you that document and ask if you can

STEPHANIE MYERS - COURT REPORTER

(814) 333-1545

1 tax due on those.

2 Q. Did Matson receive, as a result of the merger
3 from Fisher & Young, any type of deeds transferring either
4 the timber and/or the real estate for any of the properties
5 to Matson?

6 A. Did they receive a deed?

7 Q. Yeah.

8 A. In '86?

9 Q. Correct.

10 A. No, not to my knowledge.

11 (Deposition Exhibit No. 2 was marked for
12 identification.)

13 BY MR. FRYLING:

14 Q. Mr. Dennison, I'm going to hand you what was
15 marked as Exhibit No. 2 and ask if you can take a look at
16 that document for us, please.

17 A. (Witness complied.)

18 Q. Mr. Dennison, with regard to Exhibit 2, have you
19 seen that document before?

20 A. Not to my knowledge.

21 Q. All right. This is a document that was provided
22 to us by counsel for Matson, Mr. Ging, in request -- or in
23 response to a subpoena that was issued to Matson Lumber
24 Company for copies of deeds relating to the properties that
25 they acquired from Fisher & Young.

STEPHANIE MYERS - COURT REPORTER

(814) 333-1545

1 Fisher & Young Hardwoods, Inc. Does that appear to be
2 correct?

3 A. Yes, from Fisher & Young, Inc. and Fisher & Young
4 Hardwoods with a bunch of other grantors involved.

5 Q. It's my understanding, from just kind of a
6 history, when Mr. Carlisle purchased the land that is known
7 as Clough Farm, he purchased from Fisher & Young, Inc., who
8 would be named as the grantor in that timber deed, correct?

9 A. They are one of the grantors, yes.

10 Q. And that ultimately Fisher & Young, Inc. became
11 American Hardwoods, which became Fisher & Young Hardwoods,
12 which ultimately was the company that merged with Matson.
13 Is that your understanding as well?

14 A. That's what my understanding is.

15 Q. This appears to be a timber deed, then, from
16 Fisher & Young, Inc. to Fisher & Young Hardwoods, Inc.
17 transferring presumably whatever properties and timber were
18 owned by Fisher & Young, Inc. at the time to Fisher & Young
19 Hardwoods, Inc.?

20 A. Yes.

21 Q. There is a similar type of deed that was created
22 from Fisher & Young Hardwoods, Inc. to Matson Lumber
23 Company -- or Matson Hardwoods?

24 A. No.

25 Q. It's my understanding that to the extent that

STEPHANIE MYERS - COURT REPORTER

(814) 333-1545

1 Matson Hardwoods acquired timber rights to the Clough Farm,
2 they would have acquired through the merger whatever
3 interest Fisher & Young Hardwoods held at the time; is that
4 correct?

5 A. That's correct.

6 Q. In reviewing this timber deed from Fisher &
7 Young, Inc. to Fisher & Young Hardwoods, Inc., it appears
8 that the only parcel that was transferred to Fisher &
9 Young, Inc. regarding the Clough Farm appears on page seven
10 of the exhibit. And you can take a quick look. I have
11 done it, and I couldn't find any other reference to Kinkead
12 or to the Clough Farm in that deed.

13 MR. GING: I am going to object to the form
14 of the question, as it relates to the Clough Farm, but you
15 can answer the question.

16 A. Can you restate that because, see, I don't know
17 -- I'm not familiar with this deed. I'm not familiar,
18 without looking at the description, legal description for
19 the Clough Farm.

20 Q. Okay.

21 A. So, this don't really --

22 MR. FRYLING: Let me mark this 3.

23 (Deposition Exhibit No. 3 was marked for
24 identification.)

25 BY MR. FRYLING:

STEPHANIE MYERS - COURT REPORTER

(814) 333-1545

1 Q. I'm going to show you what we marked as Exhibit
2 3, which is a copy of a deed between Marion C. Kinkead and
3 Fisher & Young, Inc.

4 This deed is dated March 27, 1969, and you can take my
5 representation that this, to the extent that we know, is
6 the deed by which Mrs. Kinkead transferred the real
7 property to Fisher & Young, Inc. That deed includes a
8 description of the real estate that was transferred by
9 Mrs. Kinkead to Fisher & Young.

10 A. Okay.

11 Q. Now, I believe that that legal description
12 includes 18 enumerated parcels of land. It's my further
13 understanding that at the time that Mrs. Kinkead sold to
14 Fisher & Young, Inc. that one of those parcels had
15 previously been sold to a third party, so that one of the
16 parcels included within that description actually wasn't
17 owned by Mrs. Kinkead at the time that she sold it to
18 Fisher & Young.

19 MR. GING: Before we go on -- I'm sorry, go
20 ahead. I apologize.

21 Q. It's my further understanding that in reviewing
22 the deed from Fisher & Young to Mr. Carlisle that one other
23 parcel of property that was acquired from Mrs. Kinkead was
24 not transferred to Mr. Carlisle. So, the original Kinkead
25 deed lists 18 parcels, the deed to Fisher & Young was 17

STEPHANIE MYERS - COURT REPORTER

(814) 333-1545

1 parcels, the deed from Fisher & Young to Carlisle consisted
2 of 16 parcels.

3 Having said that, that's the original deed or copy of
4 the original deed from Mrs. Kinkead, and my question to you
5 is, does that legal description for the Carlisle Farm,
6 either in whole or in part, appear in the timber deed
7 between Fisher & Young, Inc. and Fisher & Young Hardwoods
8 that we have marked as Exhibit 2?

9 A. Do you want me to compare the descriptions in
10 these two deeds? Or can you tell me what ...

11 Q. Well, I have reviewed this deed. There is only
12 one county listed, a Spring Creek Township, and it's my
13 understanding that the Clough Farm was located in Spring
14 Creek Township, Warren County?

15 A. Correct.

16 Q. The only reference to Kinkead or to any property
17 that appears within the chain of title for the Kinkead
18 property, I will use Kinkead because she was the last
19 common owner, the only parcel that appears to be included
20 within this timber deed that's Exhibit 2 is a parcel number
21 16 containing 153 acres?

22 A. If you're asking me if that's the only parcel in
23 Exhibit 2 that states Kinkead, you're correct. As far as
24 Spring Creek Township, it says 153 acres.

25 Q. Okay. Are you aware of any timber deed between

STEPHANIE MYERS - COURT REPORTER

(814) 333-1545

1 MR. FRYLING: I did receive a number of
2 first pages of articles of agreement, but those were
3 between Kinkead and Fisher & Young.

4 I can purport that the only documents in my box that
5 has titled on it Fisher & Young, Inc. to Fisher & Young
6 Hardwoods, Inc. is represented by the timber deed that we
7 have marked as Exhibit 2, hence my question as to whether
8 there was another deed existing between Fisher & Young,
9 Inc. and Fisher & Young Hardwoods, Inc. addressing
10 specifically the Carlisle Farm, since this deed doesn't
11 appear to include that rather lengthy description.

12 A. There was another deed.

13 Q. I will follow up with a supplemental request, but
14 if you could --

15 A. We have looked for it. I asked Leonard for that

16 Q. Do you know whether or not that deed has been
17 recorded?

18 A. It has not been recorded.

19 Q. So, you believe that there is an unrecorded deed
20 between Fisher & Young, Inc. and Fisher & Young Hardwoods,
21 Inc. specifically for the Carlisle/Clough Farm?

22 A. Yes.

23 Q. Do you know why Exhibit 2 would have been
24 recorded but this other deed unrecorded?

25 A. I have no idea.

STEPHANIE MYERS - COURT REPORTER

(814) 333-1545

1 Q. And just so --

2 A. When I said no idea, what happened in late 2002
3 or 2003, when Peter Crems called me for that deed, I looked
4 through my file and I found just the first page of that
5 deed. And then, I thought, Well, it should be recorded.
6 So, I asked Lauri Sekerak to get me a copy of it.

7 Q. We have had a couple of conferences over the
8 phone back and forth with regard to document requests and
9 whether there were documents and/or other documents.

10 It was my understanding, from prior conversation with
11 Attorney Ging and yourself, in response to that that there
12 was a 1973 timber deed that Peter Crems had inquired about
13 getting a copy of, and it was my understanding that in
14 response to that you had contacted Ms. Sekerak and asked
15 her to provide you with a copy of that deed.

16 Are you talking about the same deed?

17 A. Right. He called me and wanted to see the deed,
18 as I recall, from Fisher & Young to Fisher & Young
19 Hardwoods, and I thought that was sort of a curious -- I
20 thought, Well, why don't you just get a copy of it.

21 So, I remember thinking, Well, I will just get a copy
22 from Len, and I remember thinking that Len wouldn't have it
23 because we didn't have anything from -- Len wouldn't have
24 that because we didn't have anything regarding the chain of
25 title.

STEPHANIE MYERS - COURT REPORTER

(814) 333-1545

1 And the only thing that I could find was the first
2 page of that deed. Somehow, we got that, I don't know how,
3 but then I asked -- Then I just sort of didn't look for it
4 anymore because I got busy on other things, and then Crems
5 called me again and wanted -- I'm trying to think of this.
6 He called me, and that's when I found the first page of
7 that deed and I sent him the first page of the deed.

8 I can't remember exactly what happened after that
9 except that I called Lauri Sekerak and I said, Get me the
10 deed between Fisher & Young and Fisher & Young Hardwoods,
11 Inc.

12 And then, in the mail, I got the deed that had Marion
13 Kinkead's name on it, and I looked at that deed and I
14 thought to myself, She must have misunderstood what I was
15 talking about because I had never heard of Marion Kinkead
16 before. I thought we had just gotten our signals crossed,
17 and I'm not familiar with the legal description with the
18 Clough Farm, so I didn't look at it to see if it jived or
19 anything. All I remember is seeing Kinkead and thinking
20 this must be some mistake.

21 So then some period of time went by, and then, Crems
22 called me again and said, I want to -- can you please send
23 me the deed between Fisher & Young and Fisher & Young
24 Hardwoods, Inc. I think at that point I called Lauri
25 Sekerak, and I said, Lauri, I wanted you to send a deed

STEPHANIE MYERS - COURT REPORTER

(814) 333-1545

1 between Fisher & Young and Fisher & Young Hardwoods, Inc.
2 and you sent me this Kinkead deed. And she said to me, she
3 said, Well that's the last deed of record.

4 So, then, I think I went through my file and I found
5 the first page of that Fisher & Young to Fisher & Young
6 Hardwoods, Inc. deed, but that's all I had. And I remember
7 I sent it to Crems.

8 Q. Okay.

9 A. But then, I started to wonder, Well, why was that
10 the last -- why was that Kinkead deed the last deed of
11 record.

12 So then I think I went to -- figured out I went to the
13 certificate of title, and it said that Kookogey was holding
14 some deeds. So, I tried to find Kookogey, and he was no
15 longer practicing, so I called an attorney over there that
16 I knew, and I said, Do you know where John Kookogey is? He
17 said, He is retired, but sometimes he goes into the office
18 every once in a while with an attorney over there in
19 Titusville.

20 So, that's when I contacted John Kookogey and I said,
21 Do you have these deeds that you reference in your
22 certificate of title, and he didn't know, but he said, I
23 would be more than happy to go down to my old office, if
24 you can go over, and we can go through my files and we can
25 see if I have those deeds.

STEPHANIE MYERS - COURT REPORTER

(814) 333-1545

1 So, that's what I did. I went over to his office, and
2 he had several deeds, one of which was the original
3 unrecorded deed from Fisher & Young to Fisher & Young
4 Hardwoods, Inc.

5 Q. Did you make copies of those?

6 A. I brought them back to my office, and I gave them
7 to Len.

8 Q. Tell me when this occurred.

9 A. This would have occurred in -- Let me see
10 something. (Witness on computer.) I think it would have
11 occurred in -- What was the date of the Squatriti deed?

12 Q. May 6th of 2003.

13 A. It would have been prior to that. It would have
14 been March or April of 2003, in that range.

15 Q. Okay.

16 A. Because I got the call from Crems in December,
17 January, sometime in that time frame, and then there was a
18 delay. And then, I called Lauri, and she told me that that
19 was the last deed of record, and it was after that point
20 that I started to try to find John Kookogey.

21 Q. Prior to going down and meeting with Mr. Kookogey
22 and looking at whatever documents he had in his file, do
23 you know how it is that you would have come across the
24 Exhibit 2, which is the timber deed from Fisher & Young,
25 Inc. to Fisher & Young Hardwoods, Inc.?

STEPHANIE MYERS - COURT REPORTER

(814) 333-1545

1 A. No. I have never heard of Mr. Piece, either,
2 that I know of.

3 Q. Okay.

4 (Deposition Exhibits No. 4, No. 5, No. 6
5 and No. 7 were marked for identification.)

6 BY MR. FRYLING:

7 Q. Mr. Dennison, I'm going to hand you four items
8 that I have marked Exhibits 4, 5, 6 and 7 and ask you if
9 you can identify those documents?

10 MR. GING: Can you read the exhibit number
11 when you identify them.

12 A. Exhibit No. 4 is a letter from me dated
13 August 10, 1993. It's a letter of enclosure to Len where
14 I'm enclosing a deed from B & B Hardwoods and Pennsylvania
15 Hardwoods, Inc.

16 Q. I'm not going to ask a lot of questions about
17 them, but if you could just identify them for the record.

18 A. Exhibit 5 is a letter of enclosure from me to Len
19 from the timber sales agreement from Robert Matson, Joan
20 and Becky Matson and Barb Conti to Matson Hardwoods, Inc.,
21 dated September 1st, 1993.

22 MR. GING: Hold on, John. What's the date
23 of the letter?

24 THE WITNESS: April 18, 1994.

25 A. The next one is a deed dated, Exhibit 6,

STEPHANIE MYERS - COURT REPORTER

(814) 333-1545

1 was prepared by Attorney Fossee for the 1995 litigation
2 between Carlisle and Matson, and, in fact, exhibits that
3 were admitted during the course of the trial of that case.

4 My question to you is with regard to the various
5 leases and deeds to the Clough Farm that are listed on this
6 exhibit, would you have provided those documents to
7 Mr. Fossee for this exhibit list?

8 A. Not that I remember. Again, I do not remember
9 having any direct involvement in the 1995 case.

10 Q. Who, as Matson's corporate designee, who from
11 Matson Lumber Company would have provided these documents
12 to Attorney Fossee for use at the trial?

13 A. Well, again, Len would be the vocal person.
14 Whether Len would get this information himself and/or have
15 other people get it for him, that's what I would expect.

16 Q. Would you expect, also, that these are documents
17 that would have been in possession of Matson Lumber Company
18 at or about the time of the 1995 Federal Court trial?

19 A. Well, I don't know that because, see, Fossee
20 was -- John Kookogey was a witness in that case, so how
21 much of these exhibits he actually got directly from
22 Kookogey and what he got from Len, I have no idea.

23 Q. Okay.

24 A. But I can't imagine that Len had any of these
25 letters from Kookogey to David Eardley. I mean, I don't

STEPHANIE MYERS - COURT REPORTER

(814) 333-1545

1 know. You would have to ask Len if he had those. I don't
2 know.

3 Q. Okay. So, these documents either came from
4 Matson or they came from Attorney Kookogey, who was a
5 witness in the trial for Matson Lumber Company?

6 A. Unless Chet Fossee got them from some other
7 source that I'm not aware of. You would have to ask him.

8 Q. All right. This list of documents includes a
9 copy of the deed between Marion C. Kinkead and Fisher &
10 Young, Inc. dated 3/27/69 designated as Exhibit No. 2 on
11 the first page; is that correct?

12 A. Yeah. Let me look through this, though.

13 Yeah, I don't -- the only thing that I would say about
14 this list is that I do not -- unless some of these letters
15 were in that file that Kookogey gave me that he had, I
16 don't recognize any of these letters, and I cannot say
17 where they came from or any of these exhibits came from,
18 whether they came from Chet Fossee, John Kookogey or Matson
19 Lumber Company. I have no knowledge of where he got those.

20 Q. My question with regard to this exhibit is it
21 appears that Exhibit No. 2 is a copy of the deed between
22 Marion C. Kinkead and Fisher & Young, Inc., 3/27/69, and
23 Exhibit No. 3 would be Article of Agreement between Marion
24 C. Kinkead and Fisher & Young, Inc. dated 4/1/68.

25 A. Yes, I see that.

STEPHANIE MYERS - COURT REPORTER

(814) 333-1545

1 Q. If this package of documents is, in fact, a true
2 and correct copy of the exhibit listing exhibits that
3 Mr. Fossee had at the time of trial, these documents would
4 have been in Matson's possession then prior to the
5 beginning of that 1997, I guess, was the actual year of
6 that trial date, correct?

7 A. They would have been in Chet Fossee's possession.
8 Whether they were in Matson Lumber Company's possession, I
9 have no knowledge.

10 Q. Okay. Did you review the pleadings in that 1995
11 federal litigation?

12 A. I think I would have reviewed the initial
13 Complaint when it came in, and then there was a discussion
14 about who was going to be retained to defend the case, but
15 beyond that, I don't have any knowledge of reviewing any of
16 the pleadings or anything in that case --

17 Q. Were you aware --

18 A. -- until after it was over, of course.

19 Q. Were you aware that Mr. Fossee was filing a
20 counterclaim at that time?

21 A. I knew that he had filed a counterclaim, but when
22 that was or whether that was after the lawsuit, after the
23 verdict, I have no idea.

24 Q. So, you weren't asked to review or approve that
25 counterclaim on behalf of Matson?

STEPHANIE MYERS - COURT REPORTER

(814) 333-1545

1 that John Kookogey gave, plus a review of the articles of
2 agreement and the deed from Fisher & Young to Albert
3 Carlisle.

4 That's really the basis of my belief because I have
5 never done a title search.

6 Q. I'm going to show you, I guess in reverse order,
7 Exhibit 14, which is an article of agreement, dated April
8 1, 1968 between Marion C. Kinkead and Fisher & Young, Inc.,
9 and then Exhibit 12 appears to be the subsequent deed
10 relating to that article of agreement. The deed is dated
11 April 20 -- I'm sorry, that's not correct.

12 What I have handed you appears to be an article of
13 agreement between Marion C. Kinkead and Fisher & Young.

14 A. Yes, Marion Kinkead and Fisher & Young, yes.

15 Q. That's dated April 1st, 1968?

16 A. This is for 25,000.

17 Q. Does that article of agreement include in its
18 sale any timber and trees to the Carlisle property?

19 A. This does not include the trees, the timber and
20 trees.

21 Q. Okay. Would you agree that if Fisher & Young,
22 Inc. had not acquired rights to the timber and trees to the
23 Clough Farm from Mrs. Kinkead that they would not be in a
24 position to transfer any interest in the timber and trees
25 to Bert Carlisle at the time they sold it to him?

STEPHANIE MYERS - COURT REPORTER

(814) 333-1545

1 MR. GING: I am going object to the form of
2 the question as asking him to speculate, asking for a legal
3 conclusion and asking for an opinion.

4 You may answer the question, if you can.

5 A. Okay, again, my basis to believe that Matson owns
6 the timber and trees is based upon John Kookogey's
7 certificate of title and the article of agreement and deed
8 from Fisher & Young, Inc. to Albert Carlisle. I have not
9 done an independent title search.

10 Q. As far as you know, no one on behalf of Matson
11 Lumber Company or Matson Hardwoods has done an independent
12 title search on the property other than what may have --
13 other than what they may have received from the McChesney
14 litigation?

15 A. I know that I never did a title search for Matson
16 Lumber Company or Matson Hardwoods, Inc. on the Clough
17 Farm.

18 Q. As a corporate designee, for purposes of today's
19 deposition, did you inquire as to anyone from Matson Lumber
20 Company whether they had requested or had performed a title
21 search or a title abstract on the Clough Farm?

22 A. I would be the person that would recommend that
23 --

24 Q. Okay.

25 A. -- on behalf of the corporation, normally. So, I

STEPHANIE MYERS - COURT REPORTER

(814) 333-1545

1 would say, no.

2 Q. I guess my question was more specific. For
3 purposes of today's deposition, did you make any inquiry to
4 any Matson representative or employee as to whether they
5 had ever, not using you or independently of you, ever
6 requested or secured a title search or title abstract on
7 the Clough Farm?

8 A. I didn't ask anybody that.

9 MR. GING: I have made that inquiry, and I
10 can represent to you, as counsel, that if it would be done,
11 John would be the one that would do it and that no such
12 request had ever been made of anybody else.

13 Q. My understanding, so I can complete this line of
14 thought, is that that is true even as of today?

15 A. Correct.

16 Q. Have you ever seen the document that is marked as
17 Exhibit, I believe it's 14?

18 A. Yes.

19 Q. When is the first time that you would have seen
20 that document?

21 A. It would have been in 2003.

22 Q. What would be the circumstances by which you
23 reviewed that document?

24 A. Either Lauri Sekerak sent me this or a copy of it
25 was in John Kookogey's file. I'm not sure the recorded

STEPHANIE MYERS - COURT REPORTER

(814) 333-1545

1 recording stamp by any recorder of deeds?

2 A. I recognize this. I don't know if this has ever
3 been recorded or not.

4 Q. And the exhibit that you're holding that's
5 Exhibit 13, does that purport to be an article of agreement
6 between Marion C. Kinkead and Fisher & Young regarding
7 timber and trees on the Clough Farm?

8 A. Yes.

9 Q. All right. And does that document purport to
10 give Fisher & Young, Inc. the right to timber
11 Mrs. Kinkead's property for a period of time up to until
12 April 1, 1978?

13 A. Yes.

14 Q. Are you aware or have you ever seen, up until
15 today, any other document purporting to transfer any rights
16 whatsoever between Marion C. Kinkead and Fisher & Young,
17 Inc. for an interest in timber on the Clough Farm other
18 than the documents that you have in your hand, one for the
19 land and one for the timber?

20 A. The last deed in the chain of title.

21 Q. I will show you what I have marked as Exhibit No.
22 12 and ask you if you can identify that document?

23 A. Yes. This is the deed that Lauri Sekerak sent to
24 me in 2003.

25 Q. Can you identify that deed, the date and who it

STEPHANIE MYERS - COURT REPORTER

(814) 333-1545

1 Q. Okay. Again, the deed that you're holding in
2 your hand, if I'm correct, grants or purports to grant
3 Fisher & Young, Inc. the rights to timber the timber and
4 trees on the Kinkead land up until April 1st of 1978,
5 correct?

6 A. That's what it says.

7 Q. Okay. You indicated that that was, I believe
8 your words was the last deed of record?

9 A. Yes, that is what Lauri Sekerak sent to me.

10 Q. When did you contact Ms. Sekerak?

11 A. It was in late 2002 or early 2003.

12 Q. And as I understand it, your request to her
13 originally was a copy of the timber deed between Fisher &
14 Young, Inc. and Fisher & Young Hardwoods, Inc. which he
15 returned to you was actually the document that you are
16 holding in your hand, 1973, between Marion C. Kinkead and
17 Fisher & Young, Inc.?

18 A. That's what I recall.

19 Q. When you obtained that deed, did you then review
20 it?

21 A. Yes.

22 Q. And did you contact anybody at Matson Lumber
23 Company regarding that deed?

24 A. I don't know that -- I don't know that I
25 contacted anybody from Matson Lumber Company. I cannot

STEPHANIE MYERS - COURT REPORTER

(814) 333-1545

1 recall specifically doing that.

2 Q. Okay. There is attached to the Notice of
3 Deposition today Exhibit A, which is a copy of a quit claim
4 between Dora Squatriti, who is the executrix of the estate
5 of Marion C. Kinkead and Matson and, again, dated May 6 of
6 2003. Have you seen that document before?

7 A. Yes.

8 Q. And did you create that document?

9 A. I prepared it.

10 Q. What were the circumstances by which that
11 document was prepared?

12 A. After Lauri Sekerak sent this deed to me, as I
13 said before, I assumed that the deed was somewhere between
14 Fisher & Young and Fisher & Young Hardwoods, Inc. So,
15 that's why I started looking through the file, and when I
16 looked at the certificate of title, it mentioned that John
17 Kookogey had had some deeds. So, on that basis, I
18 contacted him.

19 Q. Okay.

20 A. Then, I went over on May 6 and met with him at
21 his old office, and we sat in his conference room and I
22 asked him if he had the deeds that are recited in his
23 certificate of title, and he didn't know. So, we sat down,
24 and one of the first or second files we opened up, there
25 were all these deeds sitting in there. One of the deeds

STEPHANIE MYERS - COURT REPORTER

(814) 333-1545

1 was the Fisher & Young to Fisher & Young Hardwoods, Inc.
2 deed.

3 I can't -- I wish we could find it, and I'm sure we
4 will, but I looked at that deed and I didn't think that it
5 said what I thought it should say.

6 Q. I'm sorry, what was that?

7 A. I can't remember, but it didn't -- because, see,
8 this deed terminated in 1978.

9 Q. Correct.

10 A. Okay. So, this is one of these deals where maybe
11 something seems to be not right, but once you put it under
12 the microscope, everything gets resolved and you realize it
13 was okay after all. That's what I expected.

14 Q. Okay.

15 A. Because Mr. Kookogey and I talked about the
16 original deal, and looking at the file, they had split this
17 transaction into two parts to avoid paying the transfer
18 tax, which is what everybody does because there's that
19 specific exemption in the Realty Transfer Tax Act that you
20 can exempt out timber as long as the cutting takes place
21 within an immediately ascertainable date.

22 Q. I'm sorry, is the reason for that that if there
23 is an ascertainable date timber is considered, at least by
24 the taxing authorities, to be personality as opposed to
25 realty and, therefore, no transfer tax would be due on the

STEPHANIE MYERS - COURT REPORTER

(814) 333-1545

1 transfer in the interest of real property?

2 MR. GING: I am going to object to the form
3 of the question. It's asking Mr. Dennison to give an
4 opinion as to how the realty transfer tax bureau thinks and
5 opines about these transactions, but if you can answer the
6 question ...

7 A. I know, based upon the exemption -- or based upon
8 that provision of the statute, if you set up the
9 transaction that way, the timber is exempt.

10 Q. Okay.

11 A. So, that's what everybody that transfers real
12 estate and timber up here does, take advantage of that
13 exemption.

14 Q. Okay.

15 A. So, that's what Mr. Kookogey and I talked about,
16 and that was the reason why this was split into different
17 categories.

18 They did it through an article of agreement, I think,
19 because to make certain that she was going to get all her
20 money before she transferred the timber.

21 So, when I looked at the deed, I realized that it
22 didn't cure the problem with the timber going back to her
23 in 1978. The Fisher & Young -- excuse me, the Fisher &
24 Young and Fisher & Young, Hardwoods, Inc. didn't help at
25 all.

STEPHANIE MYERS - COURT REPORTER

(814) 333-1545

1 So, in looking at this deed, I said to him because I
2 went back and when I looked at it before, I said to him, I
3 said, Well, this right to cut the timber and everything
4 terminates on April 1st, 1978, and at that time, all the
5 rights should cease and that the remaining timber shall
6 vest in the grantor, who was Mrs. Kinkead, her heirs and
7 assigns.

8 He said to me, I never noticed that before, that's a
9 mistake.

10 So, read literally, then, in other words, it should
11 have vested back into Fisher & Young. So, on that basis, I
12 went to Warren County to look up if Marion Kinkead had died
13 because I didn't know anything about her.

14 So, when I got to the courthouse, I asked for Lauri
15 Sekerak because I'm not familiar with -- I mean, I can
16 figure it out, but it's easier to have an abstractor help
17 you. So, she happened to be in the courthouse, and I said,
18 Lauri, can you help me look up the name of an individual
19 Marion Kinkead? So, she said she would help me get the
20 estate papers out.

21 So, I looked at the will, and Dora Squatriti was the
22 only beneficiary, and she was also the executor, and so
23 then, I went to the telephone directory, looked under
24 Squatriti, saw her name -- or his name. I can't remember
25 who it was. Squatriti was such an unusual name, and I

STEPHANIE MYERS - COURT REPORTER

(814) 333-1545

1 Q. The name of her attorney was Attorney Mark
2 Turbessi?

4 (Deposition Exhibit No. 15 was marked for
5 identification.)

6 Q. I'm going to show you what I marked as Exhibit
7 15, which is a letter on your letterhead dated May 8, 2003
8 to Mr. Turbessi and ask if you can identify that?

9 A. Right. This is what Mrs. Squatriti wanted me to
10 write to Mr. Turbessi and sort of relate the same thing
11 that I told her and send the quit claim deed to him, and
12 that's what I did.

13 Q. At this time, I take it based on your testimony
14 that you have given so far, you did not, at that time,
15 request Mrs. Sekerak, or anyone else, to perform a title
16 search on the Clough Farm to see if maybe there were any
17 other deeds out there dealing with this property, correct?

18 A. She was quite emphatic that her mother sold the
19 timber and trees on the Clough Farm to Fisher & Young, Inc.

20 Q. I understand. All I'm asking is whether at that
21 time, as a result of your reviewing that 1973 timber deed,
22 whether that caused you, at that time, to ask Ms. Sekerak
23 or any other abstractor to perform a title search on the
24 property to see if, perhaps, there were other deeds out
25 there in this chain of title?

STEPHANIE MYERS - COURT REPORTER

(814) 333-1545

1 A. No, I didn't ask to do a title search at that
2 point.

3 Q. Was it your understanding, after reviewing that
4 1973 deed, that there was a break in the chain of title
5 from 1978 until the present time with regard to the timber
6 interest in this property by virtue of that 1973 deed?

7 MR. GING: Excuse me. I will object that
8 you're asking for a legal opinion and conclusion of law.

9 You can answer the question, if you can, John.

10 A. There was a mistake that resulted in a technical
11 break of the chain of title. The easiest way to correct
12 that was to get a quit claim deed from Dora Squatriti, as
13 executrix and as an individual. That would solve the
14 problem because, again, based upon Mr. Kookogey's original
15 certificate of title, which he issued not realizing that he
16 had made this mistake, once that was corrected, then that
17 would solve whatever title problems there were purely with
18 the chain of title itself.

19 Q. Is it your understanding or your testimony that
20 the certificate of title given by Mr. Kookogey has some
21 legal effect over the deeds that are recorded of record
22 with regard to the property?

23 A. It's on the basis that Mr. Kookogey was a
24 competent attorney who issued a title certificate.

25 But for this error, there was no reason for anyone to

STEPHANIE MYERS - COURT REPORTER

(814) 333-1545

1 Q. And can you tell me how a subsequently acquired
2 quit claim deed would cure the defect of the 1973 timber
3 deed?

4 A. Because the original article of agreement was for
5 the complete sale of the Clough Farm. The only reason it
6 was split in two agreements was to avoid the transfer of
7 taxes. So, therefore, but for that mistake, there wouldn't
8 have been a title problem.

9 Q. We have identified at least what purports to be
10 the first page of the article of agreement for the transfer
11 of timber to Fisher & Young from Mrs. Kinkead. I believe
12 that the language of the article of agreement give Fisher &
13 Young or transfer to Fisher & Young the right to own timber
14 until April 1st, 1978, correct?

15 A. Right. That's what you normally do whenever you
16 do this. You have to have a date certain, and then at that
17 point, you then structure your agreements so that the
18 timber rights then vest to whomever you sold the so called
19 surface to.

20 Q. It appears, then, that the articles of agreement
21 suffer the same defect that the 1973 timber deed suffered,
22 and that there was no reversionary interest into Fisher &
23 Young; is that correct?

24 A. No. I think they set it up that way because the
25 sale of the surface for \$25,000 was unconditional.

STEPHANIE MYERS - COURT REPORTER

(814) 333-1545

1 Q. Correct. There were no -- Well, I'm sorry. I
2 don't mean to -- When you say unconditional, there were no
3 --

4 A. Reversionary rights.

5 Q. There was no grant of timber interest at all in
6 the article of agreement for the sale of the land, correct?

7 A. Right. That's why I referred to it just
8 generally as the surface.

9 Q. Okay.

10 A. So there is an unconditional sale of surface, and
11 then to avoid paying the transfer taxes, you have to have a
12 date certain by which the timber can be cut, and that was
13 1978. And then at that point, the rights cease and then
14 the interest would then go back to Fisher & Young, Inc.

15 Q. Okay.

16 A. Even though it's the same, same entity that has
17 the surface and also has the timber rights and when that
18 terminates, even if it goes into that same entity, it's
19 still exempt from transfer taxes.

20 Q. The articles of agreement for the sale of the
21 timber does not have language in it vesting any
22 reversionary interest into Fisher & Young, Inc., correct?

23 A. It does on or after date of all rights -- Okay,
24 wait a minute.

25 Okay, the way this was set up was in 1978, Fisher &

STEPHANIE MYERS - COURT REPORTER

(814) 333-1545

1 Young was supposed to be the owner of the surface.

2 Q. I'm sorry, 19 ...

3 A. '78.

4 Q. '68?

5 A. 1978.

6 Q. In 1978?

7 A. Right. So, when their right to cut the timber
8 ceased, then it would have reverted to them anyway because
9 they were the owner of the surface.

10 Q. As long as they were the owner of the surface in
11 1978, correct?

12 A. Right.

13 Q. I understand.

14 A. That's in 1968. That's the way they set this up,
15 that supposedly Fisher & Young was going to be the owner of
16 the surface in 1978.

17 Q. Okay. As I understand it, the articles of
18 agreement for the sale of the real estate then or the land
19 were recorded -- the articles of agreement for the timber
20 was unrecorded?

21 A. Again, that makes it really slick or whatever
22 because this thing -- nobody records the timber deeds or
23 the agreements regarding the agreement for the sale of the
24 timber or the timber deed itself. You don't record that
25 because it sort of terminates on its own and then the

STEPHANIE MYERS - COURT REPORTER

(814) 333-1545

1 surface owner and the timber get reunited.

2 Q. How do you address the situation where there is a
3 subsequent purchaser who is without notice of the
4 unrecorded agreements?

5 MR. GING: Again, I am going to object to
6 the form of the question as asking for a legal opinion.

7 A. Well, I guess in this particular case, Carlisle
8 never got the timber because they were specifically
9 excepted and reserved in his deed, and he also took the
10 property subject to the terms in the agreement of sale.

11 So, he never, in all the world, the one person that we
12 know who didn't own the trees and timber were Carlisle
13 because they were specifically excepted and reserved.

14 Q. On the assumption that Fisher & Young had
15 acquired all right, title and interest in the timber from
16 Kinkead, correct?

17 A. Yes, that she had the full right, that she owned
18 the title to the surface and the timber.

19 Q. And that she had granted to Fisher & Young the
20 full right in both the surface and the timber?

21 A. That's what she contracted to do.

22 Q. Okay. As it turns out, at least upon your review
23 of the documents, there was a problem because the
24 reversionary interest was not to the owner of the land,
25 whoever that may have been in 1978, but was, in fact, to

STEPHANIE MYERS - COURT REPORTER

(814) 333-1545

1 something that was told to you by somebody else?

2 A. That's what Mr. Kookogey and I discussed, and I
3 could tell by even the material that I got from
4 Mr. Kookogey that that's what they intended to do because I
5 think the original article of agreement wasn't split. And
6 I think Kookogey, as I recall, must have said something to
7 the other attorney and said, Let's split them.

8 Q. Okay. Now, we've identified what you believe to
9 be were two problems that arose resulting from the 1973
10 timber deed. The first one we talked about was the fact
11 that the reversionary interest was not into Fisher & Young
12 or even the owner of the land for that matter, but
13 Mrs. Kinkead.

14 The second problem that you set forth in your letter
15 deals with the diameter of the timber. I was just
16 wondering if you can tell us what that is about.

17 A. I haven't looked at this in so long.

18 Now, the timber deed, I don't remember. That must
19 have the Fisher & Young to Fisher & Young Hardwoods, Inc.
20 timber deed. The timber dated -- okay, that's the '73.

21 Okay, yeah. The deed for the -- the deed for the
22 timber -- the deed for the surface, where is it? From
23 Marion Kinkead, it excepts and reserves all the trees.
24 This is it. It excepts and reserves all the trees,
25 excepting and reserving from all the timber and trees

STEPHANIE MYERS - COURT REPORTER

(814) 333-1545

1 standing and down.

2 So, she reserved all the timber and trees, but then
3 this deed would have only transferred all the timber and
4 trees measuring twelve inches one foot above the ground
5 back. So, it was not right that way, either.

6 Q. So, there were two issues that you were concerned
7 with: The 1973 timber deed, the first one being
8 reversionary interest and the second one being the original
9 agreement, except and reserve to Kinkead all timber and
10 trees and she only granted the right to Fisher & Young an
11 interest in trees 12 inches in diameter and above.

12 A. Yeah, because a lot of times, to avoid paying the
13 transfer taxes, you are dealing with merchantable timber,
14 timber that can be cut. That would be 12 inches and up.
15 That's why -- but they didn't -- somebody -- they didn't do
16 that quite right.

17 Q. As I understand it, then, other than this Fisher
18 & Young to Fisher & Young Hardwoods deed, which we can't
19 seem to locate right at the moment, which I understand was
20 unrecorded anyway?

21 A. Right.

22 Q. Are you aware of any other deeds purporting to
23 transfer an interest to anybody from anybody any interest
24 in the timber and trees on the Clough/Carlisle Farm other
25 than what we have looked at today, and recognizing there

STEPHANIE MYERS - COURT REPORTER

(814) 333-1545

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF PENNSYLVANIA

3 - - -
4 ALBERT T. CARLISLE,)
5 Plaintiff,)
6 vs.) No. 04-25 Erie
7 BARTONY, HARE & EDSON; SCOTT M.)
HARE, ESQUIRE, HENRY E. BARTONY,)
8 JR., ESQUIRE; and JOHN JOY V.)
EDSON, ESQUIRE,)
9 Defendants.)
10 - - -

11 Deposition of JOHN JOY EDSON, ESQUIRE
12 Wednesday, February 1, 2006
13 - - -

14 The deposition of JOHN JOY EDSON, ESQUIRE, one
15 of the Defendants herein, called as a witness by the
Plaintiff, pursuant to notice and the Federal Rules of
16 Civil Procedure pertaining to the taking of
depositions, taken before me, the undersigned,
17 Teresa Constantini Berardi, a Notary Public in and for
the Commonwealth of Pennsylvania, at the law offices
18 of John J. Edson, 400 Broad Street, Suite 106,
Sewickley, Pennsylvania 15134, commencing at 1:58 p.m.
19 the day and date above set forth.

20 - - -
21 COMPUTER-AIDED TRANSCRIPTION BY
MORSE, GANTVERG & HODGE, INC.
22 PITTSBURGH, PENNSYLVANIA
412-281-0189
23 - - -
24

25

1 APPEARANCES:

2 On behalf of the Plaintiff:

3 Conner Riley & Fryling:
4 Andrew J. Conner, Esquire
The Bell Telephone Building
17 West Tenth Street
5 PO Box 860
Erie, Pennsylvania 16512-0869

6

7 On behalf of the Defendants:

8 David L. Haber, Esquire
602 Law & Finance Building
9 429 Fourth Avenue
Pittsburgh, Pennsylvania 15219-1503

10

11 - - -
12 I-N-D-E-X

13

EXAMINATION BY:

PAGE:

4

14

- - -

15

EDSON DEPOSITION EXHIBIT NOS.:		PAGE:
16	1 - Memo dated 11-3-94 to Mr. Hare from Mr. Carlisle	25
17	2 - Complaint and Jury Demand	27
18	3 - Projected Litigation Budget, Albert T. Carlisle Timber Matter	29
19	4 - Letter dated 6-15-98 to Mr. Carlisle from Mr. Hare	31
20	5 - Letter dated 6-23-98 to Mr. Bush from Mr. Hare with enclosures	33
21	6 - Invoice dated 2-7-99	36
22	7 - Undated one-page handwritten document	45
	8 - Letter dated 3-17-99 to Mr. Carlisle from Mr. Edson	46

23

- - -

24

25

1 MR. CONNER: The record should reflect
2 that these are depositions taken pursuant to
3 the Federal Rules of Civil Procedure, that the
4 purposes of the depositions are for discovery
5 and use at trial, if necessary, that all
6 objections except as to the form of the
7 question are reserved until the time of trial.

8 MR. HABER: That's fine.

9 MR. CONNER: Okay.

10 Mr. Edson, I introduced myself. My name
11 is Andy Conner. I'll be asking you some
12 questions today.

13 If, by chance, I ask a question that you do
14 not hear or do not understand, please ask me to
15 repeat or restate the question because I want to
16 make sure you understand the question.

17 Is that understood?

18 THE WITNESS: I will.

19 MR. HABER: Do you want to swear the
20 witness?

21 MR. CONNER: Yes.

22 - - -

23

24

25

1 JOHN J. EDSON, ESQUIRE

2 One of the Defendants herein, called as a witness by
3 the plaintiff, having been first duly sworn, as
4 hereinafter certified, was deposed and said as
5 follows:

6 EXAMINATION

7 BY MR. CONNER:

8 Q Could you state your full name for the
9 record, please?

10 A John Joy Edson, v.

11 Q And your professional occupation is?

12 A I'm a lawyer.

13 Q And what is your age?

14 A 44.

15 Q And you reside where?

16 A In Sewickley, Pennsylvania.

17 Q Could you give us a residence address,
18 please?

19 A Sure.

20 214 Centennial Avenue.

21 Q That's in Sewickley; is that correct?

22 A Yes.

23 Q And do you have a professional address in
24 Sewickley?

25 A 400 Broad Street, Suite 106, Sewickley.

1 in the June, July or August 1998 time frame?

2 A I'll be honest, I remember calling him at
3 one point and talking to him, but I can't remember the
4 substance, other than that he should -- he needs to
5 pay us.

6 Q And with regards to his response, do you
7 recall what his response was?

8 A He always had a litany of excuses. I can't
9 remember.

10 Q Let me then go to -- just keeping it in a
11 chronological order -- I'm going to show you what has
12 been marked as a --

13 MR. HABER: 5.

14 Q -- 5.

15 MR. CONNER: Thank you.

16 (Thereupon, Edson Deposition Exhibit No. 5
17 was marked for identification.)

18 BY MR. CONNER:

19 Q Were you aware or did you become aware that
20 in June of '98, Scott was writing letters to Bert
21 and/or Lainard Bush with regards to the possibility of
22 filing a second action in Warren County, or was that
23 something not within your knowledge?

24 A In Pennsylvania?

25 Q Right.

1 A I do remember that.

2 Q What is your recollection, if any, as to
3 why Scott was preparing a precipe for a writ of
4 summons in civil action in June of 1998 to be filed in
5 Warren County?

6 A I don't know, but I'll tell you what I do
7 know, so maybe you can --

8 Q Sure.

9 A I remember that there was another piece of
10 property, and my recollection was a similar issue
11 about timbering, and what a lumber company was
12 entitled to do at this property in Warren.

13 That's all. I knew there was an issue.

14 Q But beyond that, you would not be able to
15 give us the details?

16 A No.

17 Q Did Scott ask you because of your
18 experience to either research the issue of the
19 capability of filing a second action in Warren County,
20 or provide input with regards to whether or not such
21 an action could be filed in Warren County following
22 the dismissal of those actions without prejudice in
23 federal court?

24 A No, I don't remember that. That's pretty
25 specific. No.

1 Q That's why I asked about your experience in
2 doing Rule 41 dismissals.

3 And accelerating things a little bit, one
4 or more of the claims that were to be covered by the
5 writ of summons had gone through a Rule 41 dismissal.

6 A Okay.

7 Q With that in mind, does that refresh your
8 recollection as to whether or not you did any research
9 on that issue?

10 A No, I don't remember.

11 Q With regards to the letter and precipice for
12 writ of summons that's attached to the June 23, 1998
13 letter, which I think is your Exhibit 5 --

14 MR. HABER: 5.

15 A 5.

16 Q -- you don't have any recollection of that;
17 is that correct?

18 A No.

19 MR. CONNER: I didn't put an exhibit
20 sticker on it. I have to do that. Thanks.

21 MR. HABER: Okay.

22 BY MR. CONNER:

23 Q You would have been in the process of
24 leaving the firm, what, a year later, I guess?

25 A Correct.

1 Q That would have been July 1st of 1999?

2 A Yes.

3 Q So you would have remained with the Bartony
4 Hare & Edson firm all the way up until July of 1999;
5 is that correct?

6 A Yeah, I believe it was July 1st.

7 Q Okay. I'm going to fast forward. I have
8 some other documents I want to see if I can identify
9 here, too.

10 (Thereupon, Edson Deposition Exhibit No. 6
11 was marked for identification.)

12 BY MR. CONNER:

13 Q I show you what has been marked as
14 Exhibit 6. This is a billing document of February 7,
15 1999, at least that's what the date is.

16 A Okay.

17 Q Do you recognize it as a billing document
18 from Bartony Hare & Edson?

19 A Yes.

20 Q And I think I'm correct, it makes reference
21 to the billing for the work performed by the firm with
22 regards to the preparation of the precipe for the writ
23 of summons and letter sent to Lainard Bush, along with
24 a telephone conversation with Peter Krembs.

25 Do you see that there?

1 A Yes.

2 Q It looks like that event is on 6-23-98, and
3 it looks like there's two hours of professional
4 services being billed for \$260, which adds to the
5 previous balance that comes down to a total, I think
6 of \$17,343.88 due and owing.

7 It says this invoice was submitted to
8 Mr. Carlisle.

9 First of all, would you have had any duties
10 and responsibilities with regards to preparing the
11 invoice, itself?

12 A No.

13 Q Would you have any duties and
14 responsibilities with regards to sending the invoice
15 to the client?

16 A No.

17 Q Customarily, would the client receive a
18 letter with an invoice or just the invoice?

19 If you know.

20 A I don't remember.

21 I believe it was just the invoice.

22 Q Now, with regards to the professional
23 services on the document, I don't see that there's any
24 reference to who performed the professional services
25 on the document, but I take it, from what you've told

1 though.

2 Q And the handwriting is Scott's?

3 A I believe that's Scott's writing.

4 Q Just out of curiosity, did you and/or Scott
5 do any, to your knowledge, financial background check
6 of Mr. Carlisle when he became delinquent in his
7 bills?

8 A I don't remember that.

9 Q Let me go to the last document.

10 (Thereupon, Edson Deposition Exhibit No. 8

11 was marked for identification.)

12 BY MR. CONNER:

13 Q This has been identified as Exhibit 8, and
14 this is a March 17, 1999 letter.

15 Take a moment and look at that.

16 A I've read it.

17 Q That is your signature; is it not?

18 A That's my signature.

19 Q Does that refresh your recollection of
20 actually writing the letter or not?

21 A I don't know if I wrote it.

22 Q Let me then go to the conclusion.

23 We know in May a file payment was made,
24 that is, May of 1999.

25 Were you aware that eventually a final

1 payment was made by Mr. Carlisle and accepted by the
2 firm?

3 A My recollection is that Bert finally did
4 pay us.

5 Q So he paid you, and the final payment was
6 accepted by the firm as full payment, or was there
7 something --

8 A I don't know whether it was accepted as
9 full payment, but I remember he paid.

10 Q We know that from looking at the records,
11 and I'm just going to summarize a little bit.

12 There's about \$45,000 or \$46,000 of
13 billings for the timber case to Bartony, and there was
14 about six or seven thousand dollars in billings for
15 the CRI matter, and maybe another six or seven
16 thousand dollars to Celina Insurance Company because
17 Bert had a homeowner's policy and it was a
18 counterclaim, and those totals come out to somewhere
19 between 58, 59 or 60 thousand dollars in total.

20 Can you tell us quantitatively how much of
21 that billings would have been billings that were
22 performed by you?

23 Give us a percent, or can you tell me, was
24 it a thousand dollars, couple thousand dollars of your
25 billings that were involved in that?

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF PENNSYLVANIA

3 ALBERT T. CARLISLE,)
4)
5 Plaintiff,)
6)
7 vs.) No. 04-25 ERIE
8)
9 BARTONY, HARE & EDSON; SCOTT M.)
10 HARE, ESQUIRE; HENRY E. BARTONY,)
11 JR., ESQUIRE; and JOHN JOY V.)
12 EDSON, ESQUIRE,)
13)
14 Defendants.)

15 - - -

16 Deposition of CHESTER FOSSEE, ESQUIRE

17 Monday, February 20, 2006

18 - - -

19 The videotaped deposition of CHESTER FOSSEE,
20 ESQUIRE, called as a witness by the Plaintiff,
21 pursuant to Notice and the Federal Rules of Civil
22 Procedure pertaining to the taking of depositions,
23 taken before me, the undersigned, Deborah L. Endler, a
24 Notary Public in and for the Commonwealth of
25 Pennsylvania, at the offices of MHF Logistical
Solutions, 800 Cranberry Woods Drive, Suite 450,
Cranberry Township, Pennsylvania, 16066, commencing at
10:12 o'clock a.m., the day and date above set forth.

20 - - -

21 COMPUTER-AIDED TRANSCRIPTION BY
22 MORSE, GANTVERG & HODGE, INC.
23 PITTSBURGH, PENNSYLVANIA
24 412-281-0189

25 - - -

1 APPEARANCES:

2 On behalf of the Plaintiff:

3 Conner Riley & Fryling:
4 Andrew J. Conner, Esquire
The Bell Telephone Building
17 West Tenth Street
5 Erie, Pennsylvania 16512

6 On behalf of the Defendant:

7 Weinheimer Schadel & Haber:
8 David Haber, Esquire
Law & Finance Building
9 429 Fourth Avenue, Suite 602
Pittsburgh, Pennsylvania 15219

10 ALSO PRESENT: Carrie Molitierno, Video Operator
11

12 - - -

13 INDEX

14 EXAMINATION BY:	PAGE:
15 Mr. Conner	4
16 Mr. Haber	81
16 Mr. Conner	83

17 - - -

18

19

20

21

22

23

24

25

1 VIDEO OPERATOR: This begins the deposition
2 of Attorney Chester Fossi. The time is
3 10:12 a.m. We are on the record. The court
4 reporter may now swear the witness.

5 (Witness sworn.)

6 MR. CONNER: For the record, my name is
7 Andy Conner, and I'm from the law firm of Conner
8 Riley & Fryling in Erie, Pennsylvania and in
9 these proceedings I represent the plaintiff,
10 Albert T. Carlisle. David, you want to introduce
11 yourself?

12 MR. HABER: My name is David Haber and I
13 represent the Defendants in this case.

14 MR. CONNER: Let the record reflect that
15 these are depositions taken pursuant to notice,
16 pursuant to the Federal Rules of Civil Procedure.
17 The purposes of deposition are for discovery and
18 use at trial and all objections except as to the
19 form of the question are reserved. Is there any
20 other stipulation that you request, Mr. Haber?

21 MR. HABER: No.

22 CHESTER FOSSEE, ESQUIRE
23 called as a witness by the Plaintiff, having been
24 first duly sworn, as hereinafter certified, was
25 deposed and said as follows:

1 EXAMINATION

2 BY MR. CONNER:

3 Q Mr. Fossi, you and I know each other. My
4 name is Andy Conner. And I represent Mr. Carlisle in
5 these proceedings. I'll be asking some questions. If
6 by chance I ask a question you do not hear or
7 understand, and/or if you want a document to refer to
8 a document, I think we have all the documents here or
9 most all the documents here you may need, please let
10 us know so we can either restate or rephrase the
11 question and/or provide the document that you would
12 require. Okay?

13 A That's fine.

14 Q Okay. Would you state your full name for
15 the record, please?

16 A Chester S. Fossee.

17 Q And Mr. Fossee your profession and
18 occupation is?

19 A I'm an attorney.

20 Q Just briefly by way of background how long
21 have you been an attorney?

22 A About 38 years.

23 Q Would I be correct, your career started
24 some time about 1967, 1968?

25 A 1967.

1 Allegheny County that I distinctly remember involved
2 the sale of the timber and I can't even recall the
3 details of it.

4 Q As a consequence of your involvement in
5 that other litigation, were you familiar with the term
6 timber deeds?

7 A I don't recall.

8 Q Okay. Did you know as a consequence of
9 that litigation as to whether or not for purposes of
10 conveying interest in timber, it was necessary to
11 convey it by way of a deed to be filed in the
12 courthouse?

13 A Do not recall.

14 Q Okay. Let me then move forward again with
15 regards to the claim that's involved, and I've
16 identified it as Carlisle versus Matson. It was filed
17 in the U.S. District Court for the Western District of
18 Pennsylvania.

19 (THEREUPON, Fossee Deposition Exhibit No. 1
20 was marked for identification.)

21 Q We have just for purposes of keeping things
22 in chronological order in sequence, I have identified
23 as Exhibit 1 here a copy of the Complaint that was
24 filed by Mr. Hare on behalf of Mr. Carlisle in the
25 U.S. District Court for the Western District of

1 Pennsylvania. Take a moment and look at that and tell
2 us whether you can identify that as the Complaint that
3 you became familiar with that had initiated this
4 litigation?

5 A I don't have any recollection of it. I
6 don't have anything to say it isn't. But I certainly
7 can't say that I recognize it.

8 Q Okay. With regards to your involvement in
9 that litigation, eventually did an insurance company
10 contact you and advise you that one of its insureds,
11 Matson Lumber Company, Matson Hardwoods, Inc. had been
12 sued in U.S. District Court for the Western District
13 of Pennsylvania and were in need of defense on one of
14 their policies?

15 A Not that I recall.

16 Q How did you become involved in representing
17 Matson Lumber Company and Matson Hardwoods?

18 A I had Matson Lumber Company as a direct
19 client.

20 Q Okay. So prior to the 1995, prior to this
21 litigation, had you been involved in representing
22 Matson?

23 A Yes.

24 Q Okay. Could you just identify briefly what
25 your work was for them in general? Was it litigation?

1 A It was litigation predominantly, because
2 they needed a litigator for some corporate matters
3 that they had going on and I was trying a couple of
4 lawsuits in Brookville, Jefferson County and they
5 hired me after watching me perform.

6 Q In Brookville, Pennsylvania?

7 A Yes.

8 Q Now, with regards to litigation in
9 Brookville, was that corporate litigation as opposed
10 to litigation involving timber rights?

11 A Yes.

12 Q And just briefly, over what time period had
13 you represented Matson prior to the 1995 time period?

14 A Don't know. Would maybe estimate five,
15 seven years. Don't have any specific recollection of
16 when this all took place.

17 Q So some time in the middle part of 1980s up
18 until the 1995 time period?

19 A I'd say later part of the '80s, if it was
20 in the '80s.

21 Q Brookville is the county seat for what
22 county?

23 A Jefferson.

24 Q So the litigation you were involved in was
25 involved in the Court of Common Pleas of Jefferson

1 A No recollection.

2 Q And do you have any recollection as to
3 whether or not you would have billed Matson for any
4 independent contractor doing the title search on this
5 property?

6 A I don't have a single recollection.

7 Q Okay. Let's go forward a second --

8 A I can tell you if it was done, I'd have
9 billed them.

10 Q That's what I'm trying to -- in the
11 ordinary course of --

12 A In the ordinary course of business I would
13 have billed somebody who performed services for me to
14 charge them. But it's purely an assumption.

15 Q There is an individual by the name of, I
16 may not pronounce her name correctly, I think it's
17 Lori Sackarack. She is from Warren County who is a
18 title searcher for Warren County. Did you ever have
19 any conversations with her that you can recall?

20 A I have no recollection.

21 Q Okay. Did you ask anybody to search the
22 records of Warren County for purposes of trying to
23 identify the deeds recorded in the Recorder of Deeds
24 of Warren County?

25 A I have no recollection.

1 deed that was apparently attached.

2 Q Okay. Now, prior to filing your Answer and
3 Counterclaim, Mr. Fossee, do you have a recollection
4 of having in your possession any deeds or conveyancing
5 documents from the Kinkead estate or Mrs. Kinkead to
6 Fisher & Young at the time that you filed this Answer?

7 A Have no recollection of that.

8 Q Okay.

9 A I will say that the name Kinkead rings a
10 bell, but when I came into possession of any of those
11 documents, I have no idea.

12 Q I'm going to show you what's been marked as
13 Exhibit 3. Take a moment and take a look at Exhibit
14 3. And by way of background, that compilation of
15 documents in its bracketed form was provided us by
16 Matson's counsel in response to a discovery request.

17 A Who was that?

18 Q That was Mr. Ging, I believe is that
19 correct?

20 MR. HABER: Yes.

21 Q And Mr. Dennison probably in that
22 production.

23 A What about it?

24 Q Can you identify the front page of that
25 document?

1 A Nope.

2 Q Do you have any knowledge as to who
3 prepared the front page is entitled?

4 A List of exhibits?

5 Q Yes, sir.

6 A Have no clue.

7 (THEREUPON, Fossee Deposition Exhibit No. 6
8 was marked for identification.)

9 Q Let me then keep on going here for a
10 second. Show you what's been marked as deposition
11 Exhibit 6 for these proceedings. This was also
12 previously identified as Exhibit 62 in a prior
13 proceeding. Take a look at this. This purports to
14 be --

15 MR. HABER: It's the '73 deed?

16 MR. CONNER: Yes.

17 Q Take a look, this documents purports to be
18 a deed dated April 20th, 1973. Take a moment and take
19 a look at this document. It's previously referred to
20 in the proceedings as the timber deed.

21 A That's what it says.

22 Q Okay. And can you identify it, tell us
23 whether or not you can identify this document as being
24 the timber deed?

25 A I have no recollection of that document

1 whatever.

2 Q And with regards to your seeing this
3 document, would today be the first time you have ever
4 seen that document?

5 A I can't say that.

6 Q All right. Can you tell us when it was the
7 first time you saw the document?

8 A I have no recollection. I could very well
9 have seen it. I have no recollection of when I saw
10 it, under what circumstances I saw it or anything
11 else.

12 Q Can you tell us whether or not during the
13 pendency of the proceedings between Mr. Carlisle and
14 Mr. Matson, which went from approximately 19, May of
15 1995 at least in the District Court, all the way up
16 until December of 1997, whether or not you would have
17 seen this timber deed which we have marked as Exhibit
18 6 to these proceedings?

19 A May very well have. I just don't have any
20 specific recollections.

21 Q Okay. With regards to the timber deed,
22 I'll call your attention to a, call your attention to
23 the second to the last paragraph on the third page
24 which is identified as deed book 376, page 941 and
25 just read to yourself, if you would. And then I'd

1 the Clough Farm was a part of the transaction that
2 Matson paid Fisher & Young for. I don't recall
3 anything that I was aware of that prevented Matson
4 from owning the timber.

5 Q Let me just go forward a second. Was it
6 your understanding that Matson's rights to the Clough
7 Farm timber derived from this acquisition of Fisher &
8 Young properties?

9 A Yes.

10 Q So whether or not Fisher & Young had rights
11 in the Clough Farm then was an issue that was involved
12 in the litigation between Mr. Carlisle and Mr. Matson,
13 is that correct?

14 A Don't really recall that being an issue.

15 Q Was it ever made an issue as you recall in
16 the proceedings between Mr. Matson and Mr. Carlisle?

17 A I am not certain what was ever discussed
18 about that particular deed and what was argued on that
19 particular deed. My recollection of the trial was
20 that it was based upon the agreement and deed between
21 Fisher & Young and Carlisle period. But that's just
22 my recollection.

23 Q Well, just for purposes of completing this
24 out, Fisher & Young would have acquired, if they did
25 acquire timber rights, they acquired it from some

1 other party, is that correct?

2 A I believe they did.

3 Q Okay. So and the other party we have
4 previously identified is this Mrs. Kinkead, is that
5 correct?

6 A I don't know that. You have identified
7 Mrs. Kinkead. I don't know specifically, because I
8 haven't read and compared. I may have known at that
9 time, but I don't know now.

10 Q Did you know who during the course of this
11 litigation, who Fisher & Young acquired their timber
12 rights from on this property?

13 A I'm sure I knew the history of the property
14 at that time.

15 Q And did they acquire the timber rights by
16 deed, that is did Fisher & Young acquire timber rights
17 by deed?

18 A I would assume that. Can I tell you that
19 that's what happened? No.

20 Q Well --

21 A I just assume that's what occurred. But
22 can I sit here and say yeah, I remember that's what
23 happened, no.

24 Q Well, they would have to acquire it by
25 deed?

1 A Well, obviously.

2 Q And the deed would have to be recorded in
3 the Warren County Courthouse?

4 A Well, no, only if they wanted to protect
5 themselves. You don't have to record in order to
6 acquire. You only have to record in order to protect.

7 Q Well, there would be transfer taxes --

8 A That's true. But you don't have to record
9 to acquire. You only have to record to protect.

10 Q Showing you again this, going back to this
11 deed that is identified here as Deposition Exhibit 6
12 and looks like April 20, 1973 deed, can you tell us
13 whether or not you are aware of any other document
14 that conveyed timber rights from Fisher, from the
15 Kinkead estate to Fisher & Young other than that
16 document that has been identified here today?

17 A I am unable to answer that question. I
18 have no recollection. I don't know whether there is
19 any other documentation out there or not.

20 Q Did you conduct any type of investigation
21 yourself to try to locate the documents that Matson
22 would have as a consequence of its acquisition of
23 Fisher & Young that indicated the conveyancing of
24 timber rights to Fisher & Young for this property?

25 A I went through with representatives of

1 Matson, their files regarding the Clough property.

2 Q Did they produce that timber deed as a part
3 of that translation?

4 A I have no recollection.

5 (THEREUPON, Fossee Deposition Exhibit No. 7
6 was marked for identification.)

7 Q Take a look at Deposition Exhibit 7, a one
8 page document titled Article of Agreement. It's April
9 1968 document, Mr. Fossee. Do you have any
10 recollection of having that document in your file?

11 A No. Doesn't mean it wasn't there. I just
12 have no recollection.

13 Q Okay. You have a document in front of you,
14 there is something typed at the bottom in dark print
15 if you could read that into the record, please?

16 A It states "Until April 1, 1978 on and after
17 which all the rights hereunder shall revert to the
18 owner of the land."

19 Q Okay.

20 A That's what it says.

21 Q Do you have any recollection of whether or
22 not that document was produced to Mr. Hare as part of
23 the discovery proceedings in this case?

24 A It's my recollection that the owner of the
25 land that they would revert to was Fisher & Young, but

1 that's my recollection. I can't figure out where that
2 comes from or why, but did I give this to Mr. Hare? I
3 haven't got a clue. I may very well have. I have
4 absolutely no recollection.

5 Q When you say this, this is Deposition
6 Exhibit 7. Let's go back to deposition Exhibit 6 just
7 to complete the process. What is your recollection,
8 if any, as to whether or not you would have provided
9 Deposition Exhibit 6 to Mr. Hare?

10 MR. HABER: Object to the question. I
11 think he has answered it about six times.

12 A But I don't have problems answering it. I
13 haven't got a clue. I don't know what I did. I may
14 very well have provided him with it. I may not have.
15 I don't know.

16 (THEREUPON, Fossee Deposition Exhibit No. 8
17 was marked for identification.)

18 Q Well, let me then go to, let's keep on
19 going with these documents. I'm going to show you
20 what has been marked as Deposition Exhibit 8. This
21 purports to be a letter of March 21, 1996. I think
22 it's a letter from yourself and just take a scan of
23 that letter. I might have some questions regarding
24 that letter. That might simplify or expedite things.

25 A Well, this letter certainly answers the

1 name of my firm at the time this all took place.

2 Q Which was?

3 A Which was just Reale & Fossee, PC.

4 Q Okay.

5 A Okay, I've read it.

6 Q Now, does that refresh your recollection
7 that at some point in time after you filed your Answer
8 in these proceedings that you had a meeting with
9 Mr. Kookogey who is a lawyer who represented Fisher &
10 Young, then later represented Matson with regards to
11 Clough Farm matters?

12 A No. Because I remember that without
13 reading this letter.

14 Q Okay. So you knew that Mr. Kookogey was --
15 A What it refreshes my recollection is that I
16 was reporting to Hartford Insurance Company that I had
17 forgotten.

18 Q So that does refresh your recollection --

19 A On that issue, it certainly does. Also the
20 name of the law firm at that time is also refreshed.

21 Q So Hartford was one of the insurance
22 carriers that --

23 A I suppose so. I certainly was writing to
24 their in-house counsel.

25 Q Okay. I just want to focus a second. With

1 regards to Mr. Kookogey, you understood Mr. Kookogey
2 is an attorney that initially represented Fisher &
3 Young and then represented Matson in various matters?

4 A I don't know how the representation of
5 Matson. I do know that he was involved in the initial
6 transactions regarding the property. He was, I used
7 him as a witness in the court case. Mr. Kookogey was,
8 I believe, the one who did the title searching for the
9 purchase by Matson of the properties when they got it
10 from Fisher & Young. Kookogey was involved in both
11 those transactions is my recollection

12 Q So he would have been involved at least in
13 your understanding in the early part of the
14 transaction between '68, '69 and '70 transaction --

15 A Yes.

16 Q -- and then later in the 1985, '86
17 transactions between Matson and Fisher & Young?

18 A That's my recollection.

19 Q Okay.

20 A I do know that -- well, I know he was
21 involved when Matson made its purchase from Fisher &
22 Young and he had been involved in the, in the Clough
23 Farm transaction between Fisher & Young and Carlisle.

24 Q Now, your meeting with him, with
25 Mr. Kookogey occurred looks like some time in March of